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COMMITTEE ON JUDICIARY

March 9, 2005

LB 643, 429, 507, 713, 64, 611, 585

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 9, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 643, LB 429, LB 507, LB 713, LB 64, LB 611, and LB 585. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen; Ray Aguilar; Ernie Chambers; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: None.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our 19th day of committee hearings. We're hearing seven bills today. I'm Pat Bourne from Omaha. To my left is Senator Friend from Omaha. Our committee clerk is Laurie Vollertsen. Our legal counsel is Michaela Kubat. Senator Aguilar from Grand Island. I will introduce the other members as they arrive. From time to time members will come and go to introduce bills or conduct other legislative business so if they happen to leave while you're testifying please don't take offense to that. They're simply conducting other business. If you plan on testifying on a bill, we're going to ask that you use these two on-deck chairs where Mr. O'Hara is. Please sign in in advance. Accurately print your information so that it can be entered into the permanent record. Following the introduction of each bill, I will ask for a show of hands to see how many people plan to testify on a particular bill. We'll first hear proponent testimony, then opponent testimony, and then any neutral testimony. When you come forward to testify, please clearly state and spell your name for the record. All of our hearings are transcribed and the transcribers would greatly appreciate your spelling of your name. Due to the large number of bills heard here in the Judiciary Committee we utilize the timer lights which I refer to as the Kermit Brashear Memorial Lighting System (laughter). Senators introducing bills get five minutes to open and three minutes to close if they choose to do so. All other testifiers get three minutes to testify exclusive of questions that the committee may ask. The blue light goes on for three minutes. The yellow light will come on as a one-minute warning and the red light indicates your time has ended so please conclude your testimony. The rules of the Legislature state that cell phones are not allowed in the hearing rooms. If you have a cell phone please make sure that the ringer is turned off. Reading someone else's

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testimony is not allowed. If you have a letter from an organization or a group we'd be happy to take that and submit it into the record but we will not allow you to read it into the record. we've been joined by Senator Flood from Norfolk and Senator Chambers from Omaha. With that, oh, and Senator Pedersen from west Omaha

SENATOR DW. PEDERSEN: Not yet (laughter). Lawsuit was filed this morning.

SENATOR BOURNE: (laugh) With that, Senator Brashear to open on LB 643.

LB 643

SENATOR BRASHEAR: Mr. Chairman, members of the Judiciary Committee, my name is Kermit Brashear. I'm a legislator; I represent District 4. I come in introduction and support of LB 643. LB 643 will reform and harmonize our statutes regarding court costs and fees. It will also provide for a general increase in most fees with the intent of providing additional funding for the Judges' Retirement Program. First, it is evident that from thumbing through the green copy that our court costs and fees are set forth in a variety of different sections of the statutes and that they do not follow any particular master plan. The result of such is that the total costs and fees imposed currently end in an amount that is not an even dollar. This fact creates additional administrative costs and some difficulty. Accordingly, the administrative office of the courts has requested that we make an effort to bring about a court fee structure that will end in an even dollar amount. Second, LB 643 seeks a means to address an ongoing issue with the judicial retirement system. Deficits in the retirement system must be made up by the state. There have been many disagreements over the years, however, regarding how to best provide funding for those deficits. This bill seeks to put the issue to rest by providing a source of funding for judicial retirement that will be sufficient to finance the existing and future shortfalls. Although the green copy does not earmark the fee increases for judicial retirement specifically, I have worked with people and intend to work with the committee to draft an amendment that would provide for such an earmark and it would be supported, I believe, by

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the interested parties. Based on estimates provided with the assistance of the court administrator, we believe that the fee increases would raise approximately \$800,000 per year for the Retirement Fund. Third, LB 643 would provide additional funding for indigent legal services in Nebraska. Currently, separate fees are imposed to fund both criminal indigent fees, defense, and civil legal services. Both fees would be increased by 25 cents in the bill with the proceeds going to the existing Cash Funds. In addition, the legal services fee has historically not been imposed on civil filings in county court. In order to harmonize the statutes and also bring about a greater level of funding, LB 643 would impose that fee on those cases. This will result in the potential for a significant increase for civil legal services in Nebraska at a time when other resources have diminished. Finally, the bill provides for an increase in the fee for the use of a credit card. This fee increase is necessary because currently the cost to the court system for processing credit card transactions is greater than the fee. The increase will bring the fee to the appropriate level to offset the administrative costs. These fee increases I respectfully urge ought to be acceptable to the committee because Nebraska has historically been and continues to be a state that charges less than most other states for comparable court fees. Certainly we all agree that access to the judicial branch is vital and we ought not place a price on justice. Nevertheless, it is acceptable to impose some of the costs of administering courts on those who use the system. Nebraska has typically imposed less of that cost on users than surrounding states. Mr. Goodroe, our court administrator, will provide you with detailed information in that regard but I can tell you that some adjacent states impose fees and costs that are twice and three times those paid in Nebraska. I respectfully suggest the bill is sound policy. The increases are justifiable; the uses are important and necessary and I urge your support and consideration of LB 643 and its advancement. I thank you for your time.

SENATOR BOURNE: Thank you. Questions for Senator Brashear? Senator Brashear, excuse me, Senator Chambers (laugh).

SENATOR CHAMBERS: People mix us up all the time. We both have gray hair (laughter). Senator Brashear, you and I will have plenty of opportunities to hammer out whatever issues

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we want to talk about, agreed?

SENATOR BRASHEAR: We will.

SENATOR CHAMBERS: Thank you. That would save me asking any questions now.

SENATOR BOURNE: Further questions? Senator Brashear, I really haven't been very involved in this bill so can you tell me what the extent of the total amount of fees per year that will be raised?

SENATOR BRASHEAR: In round numbers, Chairman Bourne, we're talking the 800 plus 350 for the indigent so a million 150. And that is not the green copy, Mr. Chairman. That is a reduced number that has been a result of an ongoing consultation process to make it less than the green copy and only what we need, not more than we need.

SENATOR BOURNE: So the \$700,000 that would go in...or the \$800,000 that would go into the retirement is on an ongoing basis?

SENATOR BRASHEAR: Yes, that's an earmark.

SENATOR BOURNE: And has it been demonstrated that it is underfunded by \$800,000 on an ongoing basis for...?

SENATOR BRASHEAR: That is the information I have and the information upon which I'm relying.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

SENATOR BRASHEAR: Thank you.

SENATOR BOURNE: Can I have a show of hands of those here to testify in support of this bill? I see three. Those in opposition? I see one. Those neutral? I see one. Welcome.

PAUL O'HARA: Mr. Chairman and members of the Judiciary Committee, my name is Paul O'Hara from Lincoln. I'm a registered lobbyist appearing today on behalf of the Nebraska Association of County Judges. The purpose for this

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goes back to the November report of the actuary in which he found actuarial deficits in the three retirement systems. And in that amount was \$645,000 in the Judges Retirement System that was a deficit and which is addressed in LB 643. It was originally thought that putting this money into the General Fund would equal what the state is required to contribute to make this plan sound. And it was only after consultation with the Retirement Committee Council that he thought that it would be better for the actuary to have a predictable amount of funding to be able to make this actuarially sound in the future is as simple as I can put it, where it computes present value, future contributions. And we believe that this bill with its earmarked amount would cover that amount now and in the future. And for that reason, we would support LB 643 with the amendment suggested by Senator Brashear.

SENATOR BOURNE: Thank you. Are there questions? Senator Chambers.

SENATOR CHAMBERS: Mr. O'Hara, you are the lobbyist for which group?

PAUL O'HARA: County Judges Association, Senator.

SENATOR CHAMBERS: Do you do it pro bono or do they pay you?

PAUL O'HARA: They pay me, Senator.

SENATOR CHAMBERS: Where do they get their money from to hire a lobbyist?

PAUL O'HARA: Out of their salaries or whatever other source they contribute to a fund to do that.

SENATOR CHAMBERS: But it's out of their pocket and not any money that would be in the budget for the county court system or the county judges?

PAUL O'HARA: No, that comes out of their pocket.

SENATOR CHAMBERS: Now, I don't know exactly when the suit was filed but the Legislature had required the judges to up the amount they contributed toward their retirement without giving a corresponding benefit and the judges sued the state

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in the federal court and won. You say there is a deficit now in what needs to be in the Retirement Fund, is that correct despite what was done in that court case?

PAUL O'HARA: I believe, as I understand your question, that that's accurate, Senator.

SENATOR CHAMBERS: Okay, now if we don't raise these fees, there will still be that deficit. Is that correct?

PAUL O'HARA: The law requires the state to fund an actuarial deficit in the Judges Retirement Fund.

SENATOR CHAMBERS: So what's the answer, yes or no?

PAUL O'HARA: I'm trying to answer that, Senator. The law requires the state to make up the deficit. The state General Fund would have to make up the deficit unless the judiciary were to step up and find a way to raise this money and offset the deficit through the fees.

SENATOR CHAMBERS: The purpose of this, all of these fee increases in this bill is to offset that deficit. Is that true?

PAUL O'HARA: Some of the fees in this bill are earmarked to offset the deficit. Others are going into indigent defense and legal services.

SENATOR CHAMBERS: Well, aside from indigent defense and legal services, there would be an obligation imposed by law on the state to come up with the money to take care of that deficit so if we don't increase the fees that would go for that purpose, how much would that reduce the amount in this bill in terms of fee increases? What would be the total amount of reduction, the dollar amount that would be reduced if we do not raise fees to take care of the deficit? In other words, how much is the deficit?

PAUL O'HARA: \$645,000.

SENATOR CHAMBERS: And the state is obliged to pay that?

PAUL O'HARA: That's correct.

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SENATOR CHAMBERS: So if we don't raise these fees then it comes from the General Fund.

PAUL O'HARA: That's correct.

SENATOR CHAMBERS: I believe the General Fund should take care of these things anyway. The court system should be paid for through general funds. Now, if the state did not come up with a General Fund appropriation the judges could sue again, couldn't they?

PAUL O'HARA: If the state did not come up with the appropriation, I would assume that that could be something that would be actionable. I don't know that it would.

SENATOR CHAMBERS: There have been meetings on this bill that you arranged, is that true?

PAUL O'HARA: That's correct.

SENATOR CHAMBERS: And you didn't see any need to include the Chairperson or the Council for the Judiciary Committee, is that correct?

PAUL O'HARA: No, I tried to include the Chairperson of the Judiciary Committee and tried to brief the council.

SENATOR CHAMBERS: Was it at the last minute? About how...

PAUL O'HARA: It was when this was discussed yesterday, Senator.

SENATOR CHAMBERS: Say it again?

PAUL O'HARA: It was when this was discussed yesterday.

SENATOR CHAMBERS: It was discussed yesterday you said? And what time was it discussed?

PAUL O'HARA: There was a meeting that was scheduled at 1:30 in the Speaker's Office.

SENATOR CHAMBERS: And you notified committee counsel at what time about?

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PAUL O'HARA: After we had the meeting in the Speaker's Office we gathered and this was a group comprised of the representative of the district judges, the Supreme Court administrator, the Chief Justice and myself to go over the changes in the bill that would be required to do as Senator Brashear in his opening had suggested. I know that the council had been working on this bill from the outset. The changes were complex and at the request of the council for Senator Brashear he asked that the council for the Judiciary Committee be advised of these changes before the hearing today.

SENATOR CHAMBERS: And as a member of the Legislature and former chair of the Judiciary Committee, Senator Brashear is aware of the fact that when these kind of meetings are undertaken by people who are going to bring a bill before this committee, the Chairman as just a common professional courtesy is invited, isn't that true?

PAUL O'HARA: I think the Chairman was invited to the original meeting from which the secondary meeting occurred.

SENATOR CHAMBERS: That's the 1:30 meeting?

PAUL O'HARA: That's correct, sir.

SENATOR CHAMBERS: When the judges hired you as their lawyer I meant as their lobbyist, they felt you were going to be able to persuade the committee and ultimately the Legislature to pass this bill, isn't that true?

PAUL O'HARA: I believe that it was in 1996 that I was first engaged to represent the county judges.

SENATOR CHAMBERS: So then they didn't tell you to come testify on this bill?

PAUL O'HARA: I have been meeting since about the fall with different representatives of the different courts in order to address the actuarial deficit and the ways in which we could repair it.

SENATOR CHAMBERS: I'm just a common \$12,000 a year senator so I'm going to ask you to chew that a little finer and answer it in a way that I can understand and the people that



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I represent who might be following this committee hearing. Were you advised or instructed to come and testify on LB 643 which is what we're considering now?

PAUL O'HARA: Yes, I have been apprising the county judges from the beginning of the session on the deficit, on the bills that would be introduced to address the deficit, our positions relative to the Supreme Court and the district judges and am authorized to work with the Supreme Court and the district judges in resolving it. And this was one of the bills that was chosen to address and resolve the deficit issue.

SENATOR CHAMBERS: It must be their view since they hired you...let me strike that. When you hire somebody for a job, you hire them because you think they can do the job. Now that's not a question but to give an idea of where I'm going. You're hired by the county judges to be their lobbyist. Is there a lobbyist also for the district judges?

PAUL O'HARA: There is, Senator, yes.

SENATOR CHAMBERS: Is that lobbyist here today, do you know because I'm not sure?

PAUL O'HARA: Yes, he is.

SENATOR CHAMBERS: Okay. So he or she may as well get ready. You were asked to come here because the judges...let me phrase it a different way. Were you asked to come here by the judges because they were confident that you could persuade this committee to advance the bill to the floor and then ultimately have the opportunity to try to persuade the Legislature to enact it into law? Is that why you were asked to come here?

PAUL O'HARA: Not specifically...

SENATOR CHAMBERS: Were they...

PAUL O'HARA: ...generally speaking, I'm asked to present the positions of the association to the committee in a way that we would hope would move the committee to adopt that principle or philosophy.

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SENATOR CHAMBERS: So they you for hope rather than expectation.

PAUL O'HARA: I think they hire me to represent the position that they want to have taken to this committee and to the Legislature.

SENATOR CHAMBERS: And that position is to have the committee advance the bill, is that the first step?

PAUL O'HARA: That's correct, Senator.

SENATOR CHAMBERS: So they had you come here because they felt you could persuade the committee to advance the bill or they felt that your testimony would not have any impact one way or the other?

PAUL O'HARA: Well, I would assume that they would think that my testimony would represent the position that they would like the committee to know about and to suggest that this would be an appropriate way to address the deficit that was caused by the last actuarial report.

SENATOR CHAMBERS: As a scholar, Mr. O'Hara, you know that people like...who is that fellow who wrote the Christmas Carol and Oliver Twist and...

PAUL O'HARA: Dickens, Charles Dickens.

SENATOR CHAMBERS: Thank you. That proves you're a scholar. And you know that those writers in those days were paid by the word. Do the judges pay you by the word?

PAUL O'HARA: No, Senator. In fact, I think that my testimony is very often quite brief.

SENATOR CHAMBERS: But this time you're being a little wordy in answering my questions, aren't you?

PAUL O'HARA: I don't think that I have a choice, Senator.

SENATOR CHAMBERS: Thank you, Mr. O'Hara.

PAUL O'HARA: You're welcome.

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SENATOR BOURNE: Further questions? I've got a couple. First, I want to indicate there for the record I had a member from the committee ask me for the status of this bill and I was unable to answer the question. And I think that is the reason behind this questioning so just so you know. Do you know how much money goes into the judges retirement fund now from both state and employee, i.e. the judges' sources a year?

PAUL O'HARA: Yes, I can tell you generally. I don't know if I have exact numbers but the money that goes into the judges retirement is from court fees, \$5 of court costs right now...

SENATOR BOURNE: How much goes into the fund from all sources on an annual basis now?

PAUL O'HARA: May I estimate?

SENATOR BOURNE: Sure.

PAUL O'HARA: I'd estimate about \$3,100,000.

SENATOR BOURNE: Annually.

PAUL O'HARA: Annually.

SENATOR BOURNE: Okay. And the shortfall is roughly \$700,000 and is that...that's on an ongoing basis. It's not one time? It's not a one-time injection of \$700,000 to make the fund solvent?

PAUL O'HARA: What the estimate was was currently there is a deficit, an actuarial deficit of \$645,000.

SENATOR BOURNE: For on a one-time basis or is that on an annual, ongoing...?

PAUL O'HARA: That is for this fiscal year, for the report on which he based his last report. He has also in February and as a...

SENATOR BOURNE: And he is the Retirement Committee actuary.

PAUL O'HARA: Actually, it's the state actuary, Slishinsky.

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As a member of the Retirement Committee you probably got the same briefing that they estimated that next year there's also going to be a deficit.

SENATOR BOURNE: Okay. How far out have they gone in terms of...how many years out?

PAUL O'HARA: I have, and I think that the Retirement Committee got from the actuary a graph showing that it is moving upward, it's turning upward from approximately oh, 3.8 percent this year that it was short to 4.9 next year and then it starts to flatten out.

SENATOR BOURNE: Okay. So there's deficits for the next three years in terms of there's obviously more demand on the fund's resources than money that's going in there.

PAUL O'HARA: As of today, that is what he has predicted for the actuarial future, yes.

SENATOR BOURNE: Okay. How many times have we, has the Legislature increased the retired judges or the benefits to retirees in the past few years, past five years?

PAUL O'HARA: I can go back year by year and I think that it was last year that the spousal benefit was passed but it was passed with increased contributions from the judges who chose to use it.

SENATOR BOURNE: Okay. Great.

PAUL O'HARA: And...

SENATOR BOURNE: And there was another increase, though, like three years ago, wasn't there in benefits?

PAUL O'HARA: There was a COLA increase that was passed after a study that was done by the retirement board in which they found that a deficit in the judges' retirement was the lack of a COLA and so the Legislature, I believe it was under Senator Wickersham...

SENATOR BOURNE: The deficit as it relates from a competitive point of view? Okay.

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PAUL O'HARA: That's exactly right.

SENATOR BOURNE: And I believe I voted for the COLA.

PAUL O'HARA: Yes, I believe you did.

SENATOR BOURNE: And you're aware, of course, that all the funds that the state administers, all the retirement funds are underfunded now.

PAUL O'HARA: Yes.

SENATOR BOURNE: Largely because of market considerations,...

PAUL O'HARA: That's correct.

SENATOR BOURNE: ...but also because we've increased benefits on pretty much all the funds when we had excess money. Are you aware of how we're making up the shortfall in those funds...?

PAUL O'HARA: Yes, I am, Senator.

SENATOR BOURNE: ...now? And you're aware that the state employees and the teachers are of their own volition are increasing the contribution to the fund even though it's not a significant number, they are increasing their contributions...

PAUL O'HARA: Yes, I am, um-hum.

SENATOR BOURNE: ...and the judges have refused to participate in that?

PAUL O'HARA: That's not exactly...

SENATOR BOURNE: Then clarify.

PAUL O'HARA: ...accurate. The judges, according to their legal opinions, say that you cannot increase the judges' contribution without a compensating benefit. And that was part of the cost decision.

SENATOR BOURNE: What...here's my concern with \$700,000,

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\$800,000 going into the retirement on forever and perpetuity. What happens five years down the road and those numbers, the shortfalls are assuming an 8 percent return of investment and historically that's probably low, what we actually see? Although, the last few years that's actually high. What happens if five years from now that we've put in \$800,000 a year and that fund is just flush with money?

PAUL O'HARA: Then I would imagine the Legislature...I'm sure that the Legislature would change the earmarking of these dollars to either a reduction in the fees which in my history does not happen often or they would stop the earmarking and put it into the General Fund.

SENATOR BOURNE: Or maybe the judges would ask for enhanced retirement benefits as they did last...

PAUL O'HARA: Or the judges would ask for enhanced retirement benefits.

SENATOR BOURNE: I think there's a real danger and we have seen that now as we move down the road. All these funds, when the market was going crazy and the returns were high, every one of these funds we increased benefits because we responded to constituent pressure in doing that. And actuarially at the time we could justify every one of those increase in retiree benefits. And I think you can make a good argument that the average state retiree's state-funded retirement plan is woefully inadequate. But what I'm concerned about is that we will have a fund in several years that is absolutely flush with cash and the pressure will be not to eliminate the increased contribution through these fees but it will be to increase benefits and again part of the problem that we're having with all of these retirement plans today is because we were, in my mind, as looking back, a little too generous in terms of adjusting the benefits upward and then the market fell, the bottom went out of the market. And then, now we're having to put in millions of dollars in state contributions to these plans. So, are there any other questions? Senator Combs.

SENATOR COMBS: Yeah, just a quick question and sorry I came in late on the discussion. What is your opinion as far as if they were switched to a defined contribution plan as opposed to a defined benefit plan because that's rather an

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archaic form of employee compensation for retirement now in the business world just for this very reason. It's too sensitive to market pressures and no longer are we able to guarantee a defined benefit. It should be perhaps equally, you know, equal portions, you know, put in and matched to a defined contribution plan. And I know we had the opportunity to vote on that the first year I was in. But what is your...would that eliminate this problem if we did go to that?

PAUL O'HARA: Well, as Senator Bourne would know from his time on the retirement committee that was asked at the last retirement committee at which the issue of judges' retirement came up about changing to a defined contribution plan. But you cannot change the contract that the state has with existing judges. If you go to a defined contribution plan, that could only apply to those who would be newly entering the system.

SENATOR COMBS: Thank you.

PAUL O'HARA: You're welcome.

SENATOR BOURNE: Further questions? Seeing none, thank you.

PAUL O'HARA: Thank you.

SENATOR BOURNE: Next testifier in support.

BILL MUELLER: Senator Bourne, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska District Court Judges Association as well as the Nebraska State Bar Association in support of LB 643. The Bar Association supports LB 643 because we support judges' compensation including retirement. As Mr. O'Hara testified, there is an actuarial shortfall in the judges' retirement fund and I suppose in a perfect world we would prefer to have the state pay General Fund money into that fund to address that need. That at least in the recent past has not been a politically acceptable solution so we have looked at increasing court costs to make up those deficits. We do support the bill. I was a party to the discussions yesterday and I'm aware of the concept of the speaker's amendment and we would support that amendment to the bill. Be happy to answer questions you may have.

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SENATOR BOURNE: Questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Mueller, if this bill doesn't pass then that would put pressure on the Appropriations Committee to appropriate the money from the General Fund, isn't that true?

BILL MUELLER: I think it would.

SENATOR CHAMBERS: So why would you be in here telling us to help convert justice into a cash register type operation of the court system instead of talking to the chairperson of the Appropriations Committee since you all are having meetings on these things?

BILL MUELLER: I'm trying to recall specifically if we've talked to Senator Pederson about this issue. I don't know that I have. I know that the committee is aware of the issue because my understanding is the budget's submission from the Public Employees Retirement Board included a request both for the judges fund, the State Patrol fund, and the school employees fund to make up this deficit. I guess our concern is just to make certain that this deficit gets funded.

SENATOR CHAMBERS: Are the same individuals who had a meeting the other day on this bill going to schedule a meeting with Senator Pederson who is the Chairperson of the Appropriations Committee? Is that in the works, that plan in the works?

BILL MUELLER: We certainly will do that.

SENATOR CHAMBERS: But that wasn't the plan before today, was it?

BILL MUELLER: Well, the plan, well...

SENATOR CHAMBERS: In other words,...

BILL MUELLER: ...the plan before the...

SENATOR CHAMBERS: ...they thought this bill was going to get out, didn't they?



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BILL MUELLER: We hoped that it would, yes.

SENATOR CHAMBERS: No, you went beyond hope. You...well, let me not put words in your mouth that I'm not a seer. Did you have an expectation that this bill would be advanced? Be honest with me.

BILL MUELLER: Yes. Yes.

SENATOR CHAMBERS: Okay. And with that expectation existing there wouldn't have been any need to establish or set up a meeting prior to today with the Chairperson of the Appropriations Committee because if this bill were to be successful no money would have to come out of the General Fund.

BILL MUELLER: That's correct.

SENATOR CHAMBERS: Okay. Well, now that there might be some doubt do you think it might be wise if a meeting were scheduled with Senator Don Pederson?

BILL MUELLER: Yes, it would be very wise.

SENATOR CHAMBERS: And if you had that meeting are you going to point out that in the same way the state lost a suit not long ago in federal court brought by the judges. They could face, and when I say they, I meant the state, could face another lawsuit to compel the state to make up this deficit. Are you going to tell them that in representing your clients, the judges zealously?

BILL MUELLER: Well, I assume that Senator Pederson is aware of the statute that requires the state to make up actuarial deficits.

SENATOR CHAMBERS: Have you ever engaged in litigation, Mr. Mueller?

BILL MUELLER: Yes, I have.

SENATOR CHAMBERS: And you may presume that judges know the law.

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BILL MUELLER: Yes.

SENATOR CHAMBERS: Nevertheless, you don't presume that the judge already is familiar with the statute you would cite so you don't cite it. You present that as a part of your argument to be sure that it's a matter of the record and is there to strengthen your case.

BILL MUELLER: Yes, absolutely.

SENATOR CHAMBERS: So you're going to presume that Senator Pederson knows all these things so it's not really necessary to tell them that they might face a lawsuit.

BILL MUELLER: If the existence of that statute did not come up in our discussion I certainly would raise the existence of that statute, yes.

SENATOR CHAMBERS: And lawyers sometimes role play when they're preparing a case and they even do things when they're trying to determine which persons or the type of jury they want so if I were Senator Don Pederson and you cited the statute, I'd say, well, so what? You told me that the statute requires such and such and I say, well, so what? What are you trying to tell me other than what the statute says and I can read the statute? What is it you're looking to get from me out of this meeting, Mr. Mueller, representing your clients, the judges?

BILL MUELLER: Senator Pederson we would like you to include in appropriation for the judges retirement fund as...

SENATOR CHAMBERS: And if we don't?

BILL MUELLER: ...as required by statute.

SENATOR CHAMBERS: And if we don't?

BILL MUELLER: Then if no additional funds are deposited into the judges' account the actuary will run another computation and we may be further behind.

SENATOR CHAMBERS: So?

BILL MUELLER: And at some point if there are insufficient

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monies available to pay benefits there certainly may be litigation.

SENATOR CHAMBERS: May be or will be?

BILL MUELLER: Well, if there were insufficient funds I assume that there would be litigation.

SENATOR CHAMBERS: And who would the parties be that would...?

BILL MUELLER: They would be the recipients of those benefits.

SENATOR CHAMBERS: Who are whom?

BILL MUELLER: The judges.

SENATOR CHAMBERS: So the judges would sue the state.

BILL MUELLER: They might very well do that.

SENATOR CHAMBERS: Mr. Mueller, I'm going to read something from Senator Brashear's statement of intent. Under current law, the total of court costs and fees in a specific matter generally adds to a total ending in 0.5 meaning 50 cents. Such creates management difficulties for clerks and administrators. LB 643 would ensure that total costs and fees end in an even dollar amount. Now, there are two ways to require...to reach the even dollar amount, isn't there?

BILL MUELLER: Yes, there are.

SENATOR CHAMBERS: Senator Brashear mentioned rounding it up.

BILL MUELLER: Yes.

SENATOR CHAMBERS: But we could as easily rounded down, couldn't we?

BILL MUELLER: Yes, you could.

SENATOR CHAMBERS: Suppose the committee decided we ought to round it down? Then would the situation be worse than it is

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now or better or unchanged? If we subtracted...

BILL MUELLER: Well, there...

SENATOR CHAMBERS: ...every 50-cent amount from every...

BILL MUELLER: ...there would be, there would be...

SENATOR CHAMBERS: ...court cost.

BILL MUELLER: ...clearly, there would be less money generated to the various funds where that money goes. The counties would receive less money. The state General Fund would receive less money. Indigent defense would receive less money. I...

SENATOR CHAMBERS: So there'd be a ripple effect.

BILL MUELLER: There would be.

SENATOR CHAMBERS: When those people who are meeting decided on this approach, did they consider that there are at least two ways to skin this cat and that one of those ways may not be to their liking or didn't they consider that the Legislature might round it down from 50 cents to the lower dollar amount? Do you think they considered that as a risk that could be entailed by taking this approach?

BILL MUELLER: I don't know that the judges had any part in this rounding up or down. I think that was an administrative consideration in arriving at a total fee. Again, our...

SENATOR CHAMBERS: So if it was in...excuse me.

BILL MUELLER: ...our concern has been funding the retirement deficit.

SENATOR CHAMBERS: If it was an administrative decision, there's somebody who made it. Was it an administrator who made the decision or just who made that decision?

BILL MUELLER: I should not assume. I'm assuming that someone made that recommendation to Speaker Brashear.

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SENATOR CHAMBERS: And since we're assuming, if somebody made that recommendation would that somebody have been a judge likely?

BILL MUELLER: I doubt it, I doubt it.

SENATOR CHAMBERS: Okay. And you don't even have to pay me for that. So...

BILL MUELLER: I do not know, I mean I'm...

SENATOR CHAMBERS: I know, we're assuming.

BILL MUELLER: ...I'm speculating here.

SENATOR CHAMBERS: We're assuming.

BILL MUELLER: I don't know who that...

SENATOR CHAMBERS: Well, are you speculating about the fact that it was, or the purported fact that it was an administrative decision rather than one made by the judges that this recommendation should be made about rounding it to the nearest dollar amount?

BILL MUELLER: Yes, I'm speculating about that.

SENATOR CHAMBERS: Who is an administrator in a position to make that recommendation to Senator Brashear on behalf of the courts?

BILL MUELLER: I would guess that that would be Mr. Goodroe.

SENATOR CHAMBERS: And he's probably here.

BILL MUELLER: He's right behind me.

SENATOR CHAMBERS: And he's going to testify.

BILL MUELLER: I'm sure he can't wait.

SENATOR CHAMBERS: Champing at the bit, right (laughter).

BILL MUELLER: Yes (laugh).

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SENATOR CHAMBERS: Okay, that's all I would have, Mr. Mueller. Thank you.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Mr. Mueller, thank you for testifying. Thank you, Chairman Bourne. For indigent litigants in family law action or any type of action, is it true that there's a waiver of court fees when a potential litigant can show by affidavit to the court that they are unable to pay the fees?

BILL MUELLER: Yes, there is.

SENATOR FLOOD: Could you explain that process? And it's my understanding that it's a complete waiver to all fees. I'm familiar with it only in the family law context. I don't know if it extends into other civil litigation. Maybe Mr. Goodroe would probably be more up on that.

BILL MUELLER: Mr. Goodroe would have more specifics. One of the challenges here is, we have multiple fees. Some are waivable, some are not waivable. That's established by statute. And, again, I would like Mr. Goodroe...there may be some of those that are not waivable. I do think, though, that there is a procedure where a filing fee can be waived for someone who qualifies. Now, how that affects court costs that are assessed at the end of a matter, I think you're talking two different matters.

SENATOR FLOOD: And for my own bit because let's just explore it for just a second. You've got the court costs...if I get a speeding ticket in Lancaster County my fine is 25 bucks and my fees are...

BILL MUELLER: Costs, yes.

SENATOR FLOOD: Costs are \$93. If I file a lawsuit that's a filing fee as opposed to a court cost. Okay.

BILL MUELLER: That's right.

SENATOR FLOOD: And at times court costs are waivable.

BILL MUELLER: Yes.

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SENATOR FLOOD: If the person is indigent most often or the parties agree or...

BILL MUELLER: Yes.

SENATOR FLOOD: Okay.

BILL MUELLER: (laugh) The difficulty is, there's no general rule as to what's waivable and what's not.

SENATOR FLOOD: Okay.

BILL MUELLER: And that's as much a function of history as anything else. At one point, the Legislature put in language saying this fee is waivable, this fee is not.

SENATOR FLOOD: Okay. Thank you very much.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Mueller, when the last testifier was up here the chairman explained that questions were being asked because a member, me, had asked the status of this bill and he wasn't able to give it to us. There's a reason that you're being questioned in this manner by me and there's a reason my eyes are jaundiced on this bill. When lobbyists conduct themselves in a way as though they run things it has a very bad effect on me and it carries over. And what's that, respondeat superior or something like that. I'm not good on Latin but the one who hires the agent is responsible for the actions of the agent or the agent can bind the principal. That's a general statement. Well, sometimes principals need to be a bit more cautious or a bit more circumspect in instructing their agents how to deal with certain people. I'll speak only for myself. And I want everybody who comes before the committee or deals with the committee to understand that, and this is not anything you've done, Mr. Mueller. I'm explaining why you're getting this questioning is because of the conduct of a lobbyist. The young lady who sits to my left is the committee counsel. Although her office is in the office of the Chair, she is available to assist any member of the committee and I'm a member of the committee. I'm not a chauvinist, I'm not a sexist. And I believe women are able to speak for

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themselves and take care of their own interests but when there is an individual who works for us or me even indirectly, I have a responsibility to that person. And I don't want to find out that any lobbyist treats this young woman dismissively with anything less than total respect, consideration, and I want every professional courtesy extended to her that would be extended to the President of the United States. And if I find out that has not been done then with the meager resources at my disposal I'm going to make the situation the way I think it ought to be. I would never with only a pencil go into a lion's den and attack a lion. But if I'm in the den with the lion and the only thing I have is a pencil I'm going to find out if things can be done with that pencil that have never been done before when confronted by a lion. I don't want the young lady to be embarrassed and I don't want her to be offended. In a sense, she's my daughter and nobody offends against my daughters. And I have many daughters other than just those who are my biological children. So, Mr. Mueller, on this bill the only thing that may be left is some money that will go to the indigent defense fund and maybe there was some other one mentioned. But as far as the judges they might need to go talk to Senator Pederson and threaten to sue him if the General Fund does not come up with the money. And I don't want you to have to leave here speculating about what my intentions are. I want them on the record and you can get a copy of the transcript and you can make use of it and show it to whomever needs to see it to understand how things reached the turn that they did and to be aware of the fact that it's not because of anything you did or said. You happen to be the sounding board and that's all that I would have.

SENATOR BOURNE: Further questions? Mr. Mueller, in our bill books we have the summary of what fees are to be increased. And then as I understand it there's been a change. Which of those fees that were in the original bill have been eliminated?

BILL MUELLER: Senator, I don't know what you have in your bill book.

SENATOR BOURNE: Basically, a summary of the green copy versus what Senator Brashear proposed in his opening.



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BILL MUELLER: My understanding of the amendment that Senator Brashear is talking about and I don't mean to belabor this but, Senator, yesterday we had a meeting with Senator Brashear, the sponsor of the bill, in preparation for the hearing today. And Senator Brashear after a discussion told us, I want to amend the bill in this way and what my understanding of what the Senator's amendment does is it earmarks the increases in the green copy to the judges retirement fund.

SENATOR BOURNE: Okay, so...

BILL MUELLER: It adds that language.

SENATOR BOURNE: Okay. So the extent of his suggested changes are earmarks so...

BILL MUELLER: Well, not no, that's not complete. That's the first thing he does. The second thing he does is there is a \$5 increase on garnishments in county court and district court and those he strikes from the bill. Thirdly, he imposes the indigent defense fee that is now not imposed on civil county court matters. I'm sorry to interrupt you. That's...

SENATOR BOURNE: No, that's okay.

BILL MUELLER: ...that's a complete description of the amendment that...

SENATOR BOURNE: Okay, as he suggested.

BILL MUELLER: That Senator Brashear has suggested to his bill.

SENATOR BOURNE: Okay. So looking at the summary of what was in the green copy, writs of execution, restitution, garnishment, attachment, examination and aid of execution in the district court, all those fees now are going to remain at \$5?

BILL MUELLER: That's my understanding, yes.

SENATOR BOURNE: Okay. So execution, restitution, garnishment, attachment, all those are going to stay at \$5.

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BILL MUELLER: That's my understanding.

SENATOR BOURNE: Okay. What is the, just...I kind of want to illustrate a point...

BILL MUELLER: Okay.

SENATOR BOURNE: ...as it relates to the judges retirement and compared to the teachers. And I do have some resentment over the fact that the judges chose to sue rather than participate when the plan was underfunded last year. And I've said that before. What does, say a judge, I think they can get retirement after 20 years...

BILL MUELLER: Senator, can I...I'm sorry, can I clarify? They didn't sue because the fund was underfunded.

SENATOR BOURNE: No, they sued because they were asked to participate through increased employee contributions just as we're asking the teachers to do now. And instead of suing they're agreed to do it and that's my...that's where I have a little bit of heartburn over what's transpiring here. But let me ask you this.

BILL MUELLER: I think there are differences between judges and the other groups of employees that I think make them different.

SENATOR BOURNE: I agree and I'm going to illustrate how it's different. A judge can collect retirement benefits after, I believe, 20 years. Is that accurate?

BILL MUELLER: Well, that's when...

SENATOR BOURNE: I mean, I should say full retirement after 20 years.

BILL MUELLER: ..yes. That's when the judge will be fully vested in the maximum.

SENATOR BOURNE: What would a judge make after 20 years if he or she were to go on to retirement? What would they get in retirement...?

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BILL MUELLER: I believe it's 70 percent of their last three years' average salary.

SENATOR BOURNE: So the lowest-paid judge in the state is at what salary?

BILL MUELLER: A little over 100, I believe.

SENATOR BOURNE: So a judge that has 20 years in...

BILL MUELLER: \$70,000.

SENATOR BOURNE: ...would make \$70,000 a year. Do you know what a teacher who retires after 20 years would make?

BILL MUELLER: I don't know, I don't have any idea.

SENATOR BOURNE: It's roughly the same, 70 percent of salary. But their salary, on average, is \$34,000 so I don't know what my math would be. It would be mid-twenties, I would think, that they would get in retirement. And yet their fund is underfunded about \$15 million through no fault of their own. And yet they've stepped up and agreed to participate and the judges haven't done that. And does that trouble you in any regard?

BILL MUELLER: I can't speak for the teachers as to why they've stepped up to do that. I do know that the way that school employees' salaries are set is different than the way that judicial salaries are set.

SENATOR BOURNE: I agree but the fact that...

BILL MUELLER: They will go back and bargain with their school districts on their compensation package.

SENATOR BOURNE: Do you see a disconnect though that some of the lowest paid, however probably the most important individuals in terms of their responsibility are participating and yet to a greater degree than the judges were asked to do a year or two ago and they're willingly participating versus someone who's making three times the salary who has sued to not participate? That's troubling.

BILL MUELLER: And I recognize that you're troubled by that.

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SENATOR BOURNE: Further questions? Thank you.

BILL MUELLER: Thank you.

SENATOR BOURNE: Next testifier in support?

FRANK GOODROE: (Exhibit 1) Good afternoon. My name is Frank Goodroe. I'm the state court administrator. Goodroe is spelled G-o-o-d-r-o-e. What I have today is what I hope...hopefully will be factual information, background information that I pulled together for you. The first item is the actual breakdown of court cost. In this instance here, it lists out the breakdown of criminal traffic cases, what the fee is currently and what portion of that is waivable and nonwaivable. And next to that is a history of all of the docket fees. It goes all the way back to the early seventies and shows you what has transpired since that time frame and then the statutory references and an explanation of the various accounts and funds. I thought that that would be helpful information for you. In addition to that, we did a bit of a survey. There is no real source, organized source, that can tell you exactly what the fees, court fees are throughout the country. We don't have one source for that and so much of it we have to do by survey. But what I have here is by category. The different court costs throughout the country showing where we fall. Now, committee counsel has copies of that as well as much of these other things. These are not necessarily new things that we pulled together. This is something that we've been working on this bill for quite some time. I think probably even back early in the fall so it's a very complicated piece of legislation because it involves so many different fees. The one thing I did want to comment on in terms of a couple of questions that were asked. The 50-cent or the odd number that the fees come out to, this is something that is clearly something that I have raised. And the reason that I raised it is because so many clerks at both the county court and the district court level have raised it with me. Apparently, what happens, for example, in a traffic case where the total fee would be \$41.50 with cost. We have a situation where there's a...

SENATOR BOURNE: That is red (laugh). If you'd like to conclude your thought, go ahead, Mr. Goodroe.

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FRANK GOODROE: Well, apparently, what people will do is they will intentionally pay...not pay that amount and so we end up having a case which is kind of there, where we can't even facilitate handling the money is part of the problem. Or then we write a check for 50 cents and we've had instances where we've sent money back if it's like a traffic ticket or something like that. We sent money back for 50 cents in a check to California or vice versa or we'll ask them to send a check to us for 50 cents. So the clerks don't have much discretion in this and so we kind of end up having this case just kind of hanging out there because the fee that was paid or received is not the correct amount.

SENATOR BOURNE: Thank you. Are there questions for Mr. Goodroe? Senator Combs.

SENATOR COMBS: I have one question and this was one I asked earlier of Paul O'Hara but a different form. Since they presented you as being really a smart person maybe you can help me. How then would we change the judge from a defined benefit to defined contribution plan? That's a big question but I see that as perhaps something that would be desirable, and how would that be accomplished? Would that be through statute or?

FRANK GOODROE: I am the least prepared person...

SENATOR COMBS: Oh, okay.

FRANK GOODROE: ...to address that. That is just not my...

SENATOR COMBS: Are you familiar with those, with that...

FRANK GOODROE: I'm familiar just basically but I would not really be able to advise you.

SENATOR COMBS: As far as the fiscal advisability for the person writing the checks for the retirement plan, in your opinion, would a defined contribution plan be a better use of the people in Nebraska's funds than of defined benefits, safer for their investment?

FRANK GOODROE: Senator, I don't have an opinion.

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SENATOR COMBS: You don't have, okay.

FRANK GOODROE: I just don't have enough information on that, I'm sorry.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Goodroe, I'm interested in talking about waiving indigent persons' filing fees in cases. Could you explain how that works for...?

FRANK GOODROE: I can somewhat mostly from the district court perspective, not as much from the county court perspective. In a district court proceeding people can seek to proceed in forma pauperis. There's an application, it's a pretty simple kind of thing and it goes to the district judge. Once that is approved, if it's approved and generally it is, could be in a divorce proceeding, it can be in a criminal matter, a variety of even civil matters. Then that notice is given to the clerk and then the clerk then knows that, to proceed and there will not be any fee at any time in that case.

SENATOR FLOOD: If, for instance, a wife wanted a divorce from her husband and she sought the services of Legal Aid, didn't have to pay for anything, and let's assume that case went all the way to the Supreme Court and we raised the fee under this bill from \$50 to \$100. Say it goes to the court of appeals, then the Supreme Court and they refile the brief, it moves on. Does legal services, do they usually prepare that form so that they can get that fee waived or is it waived at the district court level and then it's waived everything after?

FRANK GOODROE: I don't know the question...I don't know the answer to that. It's a good question. I have just seen it from the perspective at the district court level. And I believe what transpires in some ways is the counties end up paying for it if it goes to the appellate courts.

SENATOR FLOOD: But it would be a fairly accurate statement to say that the courts are very open to waiving fees for indigent persons if they can show cause as to why they can't pay it.

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FRANK GOODROE: I believe that's the case.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Goodroe, when you came to testify today was it for the purpose of giving us information? Is that the main reason you came today?

FRANK GOODROE: My purpose was to give you factual information as far as what the bill, as written, what the result would be and what kind of...

SENATOR CHAMBERS: I want to help demonstrate...

FRANK GOODROE: ...I prepared the fiscal note. Pardon?

SENATOR CHAMBERS: ...I want to help demonstrate that axiom that it's more blessed to give than to receive. You've given and now I'm going to let you receive something because I presume you're to take back to the Chief Justice any information that might be pertinent to his interests and those of the court. Is that correct?

FRANK GOODROE: Certainly, certainly.

SENATOR CHAMBERS: Before you came here today were you aware or did you have any reason to suspect that my attitude toward this bill would be what I have shown it to be during the course of this hearing? Namely, being very negatively inclined toward this bill?

FRANK GOODROE: I had no impression. I haven't talked to you about the bill so I...

SENATOR CHAMBERS: So the Chief Justice probably wouldn't know either since he and I have not talked about it, would you agree?

FRANK GOODROE: I don't know if you talked about it or not.

SENATOR CHAMBERS: Well, do you...I'm telling you we haven't, not this attitude that I'm showing today because it just developed. So unless he is a member of the Psychics Friends he won't be aware of it if somebody doesn't tell

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him. So when you go back are you going to relay this information to him or should I?

FRANK GOODROE: I can do that but you're more than welcome to, I would encourage you to do it likewise...

SENATOR CHAMBERS: Okay, I'm not going to suggest what you ought to do. I just don't know what your relationship with the Chief is. But if it's not something you would automatically do, I'm not saying you should or shouldn't do it. I will just assume that I'm going to have to tell him myself and I will.

FRANK GOODROE: We have an excellent relationship and we talk frequently.

SENATOR CHAMBERS: Well, now that you and I have had this nice conversation, are you going to tell him?

FRANK GOODROE: Certainly.

SENATOR CHAMBERS: What are you going to tell him?

FRANK GOODROE: Well, that basically that there's concerns about I perceive, communications...

SENATOR CHAMBERS: Between whom and whom?

FRANK GOODROE: ...of how this, the further discussions on this piece of legislation and apparently because of the meeting that occurred yesterday. This...

SENATOR CHAMBERS: Was the Chief Justice at that meeting?

FRANK GOODROE: Certainly.

SENATOR CHAMBERS: Oh, so he'll be familiar with the meeting then.

FRANK GOODROE: Right.

SENATOR CHAMBERS: So once you say that then the light bulb will go on and you won't have to explain any details of the meeting.



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FRANK GOODROE: Um-hum.

SENATOR CHAMBERS: Were you at that meeting?

FRANK GOODROE: Yes, I was.

SENATOR CHAMBERS: Was it the consensus generally that this bill had at least a 50-50 chance of being successful in terms of being enacted into law?

FRANK GOODROE: There wasn't any particular speculation one way or the other.

SENATOR CHAMBERS: Oh, so if it's not enacted, nothing ventured, nothing gained. They won't be disappointed since they weren't expecting anything, will they?

FRANK GOODROE: Well, as Mr. O'Hara and Mr. Mueller indicated, I think one of the concerns is the current law, it's in LB 643 that's...it's in the first...I think it's on the fourth page that references the responsibility of the state to appropriate supplemental appropriation if there is a deficit and that's on...

SENATOR CHAMBERS: Okay. Let's take it a step at a time, Mr. Goodroe. By the way, I like the way you give your name. I'm kind of a "rhymester." And when things rhyme I pay attention. G-double o-d-r-o-e.

FRANK GOODROE: That's correct.

SENATOR CHAMBERS: That's pretty good, the first, middle, and last sounds rhyme. Now, the word that I think was key in what you read was appropriate or appropriation. These fees are not appropriations, are they?

FRANK GOODROE: No.

SENATOR CHAMBERS: So this bill is actually moving in a direction not directed by the statute you refer to, isn't that true? That statute makes no reference to court, increases in court fees, does it?

FRANK GOODROE: It makes the references to if there is a difference, if there is a deficiency. The state is

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obligated to a supplemental appropriation which it's my understanding Anna Sullivan presented in the budget request. Identified...you know, this stuff goes on with these actuarial reports. Several months ago but she included that per law, that information. And...

SENATOR CHAMBERS: So that is before the Appropriations Committee now.

FRANK GOODROE: Was included in the original request that would have gone to the governor.

SENATOR CHAMBERS: And that request has not been withdrawn. Is that true?

FRANK GOODROE: I have no idea. I don't know the process well enough...

SENATOR CHAMBERS: Did the governor include it in his request to the Appropriations Committee?

FRANK GOODROE: Not to my knowledge, I...

SENATOR CHAMBERS: Well, isn't it the governor's responsibility to see that the laws are faithfully and efficiently executed and that is a law? And for it to be faithfully and efficiently executed an appropriation is required.

FRANK GOODROE: I can't speak exactly how...Anna Sullivan probably provided information on whatever appropriation was going to be needed for every one of the funds, probably all at one time when she made her budget request or information in the budgeting process. Where that goes from there, I don't know. It hasn't been something that's been mentioned to me. I don't have a specific recollection that is included anywhere in the budget and I don't know if the other items for the other funds, retirement funds, are included. All I've seen is what I've read in the paper. So what this is trying to do is trying to create a remedy short of a General Fund appropriation so.

SENATOR CHAMBERS: Thank you, Mr. Goodroe.

SENATOR BOURNE: Further questions? Senator Pedersen.

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SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Goodroe, I have some concerns more on the other end of the cost when Senator Flood was talking about the indigent. You've been with the court system for a long time, haven't you? When we raise the cost of filing fees or whatever it is, it costs more to go to court every time we raise some fees or something. Don't we create more people who are on the indigent files?

FRANK GOODROE: Well, frankly, I'm not sure the number of people that actually seek that out, the indigent. I saw it more from the district court side and it tended to be prisoner, people that were in prison, prisoner actions that were brought and prisoners that were seeking divorces. And that's where I saw it. There may have been many other instances but it just so happens that in Douglas County each of those in forma pauperis requests go to the presiding judge. So I knew that there was quite a quantity of them but I tended to believe that they were more prisoner...initiated by prisoners.

SENATOR Dw. PEDERSEN: If they don't pay these fees that's a jailable offense, isn't it?

FRANK GOODROE: Well, it depends on the type of case. If they don't pay it at the district court level it's not filed. At the district court level you either...you have to pay the fee to file the case or you have to get the in forma pauperis determination. The county court level, it doesn't work that way. You don't have to file the fee at the beginning and depending on the case, I mean, if it's a ticket or a criminal case and you don't pay the required fees then yes, there is...

SENATOR Dw. PEDERSEN: And that's good information because I work on the criminal side and the civil side is not something I know a whole lot about but I...

FRANK GOODROE: And then all protection orders, there's no fees involved in any of the protection orders. And that's done well, at all three court levels but most of the protection orders are issued by district courts and there's no fees anywhere in that process.

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SENATOR DW. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Mr. Goodroe, the green copy of the bill lists 20, 23 areas of fees that are going to be increased.

FRANK GOODROE: Yes.

SENATOR BOURNE: And as Speaker Brashear indicated, he's changed that slightly in that what fees are being deleted that were previously asked for?

FRANK GOODROE: Well, the only...Mr. O'Hara, I believe, is the one that addressed it. He was perfectly correct (inaudible), Mr. Mueller. The only actual change...well, there's maybe two changes. One is the garnishments and that would be the garnishments, executions, restitutions. The green bill proposed a \$10 fee and, again, that was my suggestion. It's a matter of the garnishments particularly are a significant quantity of work in the county court system. And our problem was trying to define the actual quantity but I did provide an estimate in our fiscal note that this amendment that would be the proper title for it would eliminate increasing it from to \$10. We'll just keep it at the \$5.

SENATOR BOURNE: That's the only fee that we are eliminating?

FRANK GOODROE: Well, and then another one that I discovered today and I can't say with certainty. I think Mr. O'Hara mentioned it. The county court civil side, I showed him my sheet as there is no legal services fee charged and I think the bill might have been written differently. So I...

SENATOR BOURNE: So the county court's civil matter is not going to be increased to \$20 from \$18?

FRANK GOODROE: It would go from \$18 to \$20 but also it would go \$5.25 for legal services, is...

SENATOR BOURNE: So the only fee that we're eliminating of this entire list of 20 some fees is the garnishment fee?

FRANK GOODROE: Right.

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SENATOR BOURNE: And that was...but not any of the others?

FRANK GOODROE: Right. And the green bill that counsel and I worked on and other folks worked on because it's a very complicated piece of legislation. It affected just every type of fee. But my understanding is only the garnishments and executions, restitution. And those county civil cases where for some reason currently there is not a legal services fee charged and we were...what I've noticed here is that they're proposing \$5.25 and I don't...the only additional information I put on is an assumption about uncollectables and...

SENATOR BOURNE: Further questions? Seeing none, thank you. Other testifiers in support? First testifier in opposition?

WILLIAM WROBLEWSKI: Chairman Bourne, members of the committee, my name is William Wroblewski. The last name is spelled W-r-o-b-l-e-w-s-k-i. And I'm here to testify in opposition to LB 643. At the onset, I'd like to say that I'm really here to testify on a very limited basis. I have no opinion whatsoever on the judges retirement fund or on any of the controversies relating to that. I'm just here to testify generally in opposition to raising these fees. And if you look at the various fee increases proposed in LB 643, if you look at each of them individually they seem relatively modest but when you add them all together it's a fairly significant chunk of money that we're talking about. And it's money that is paid disproportionately by a relatively small number of people. First it's paid by people like my client, Credit Management Services, a collection agency. They basically front the money. They file the lawsuits and they pay the money on that end but then they end up collecting it from the judgment debtors, essentially the indigent who are the ones who end up paying the bulk of these to the extent that the collection agencies are successful in doing their job. And that's basically the basis of our opposition. We think it's basically a disproportionate tax, if you will, on a small number of people including my client and also the people that they collect from. I'm encouraged by Senator Brashear's apparent amendment to eliminate the garnishment fee increase and I would also support the previous suggestion that if we need to have an even dollar amount that perhaps we could round

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down instead of rounding up, and that's all I have.

SENATOR BOURNE: Are there questions for Mr. Wroblewski? So the only fee that you would generally be opposed to is the one on garnishment?

WILLIAM WROBLEWSKI: We're opposed to all of the civil fee increases in county and district court. There's an increase of \$2 for the filing fee and there are a variety of other ones interspersed throughout this amendment that we'd be opposed to.

SENATOR BOURNE: But you're encouraged by the garnishment one being deleted?

WILLIAM WROBLEWSKI: Yes, that was one of the more significant ones and we support eliminating that.

SENATOR BOURNE: Further questions? Seeing none, thank you.

WILLIAM WROBLEWSKI: Thank you.

SENATOR BOURNE: Next testifier in opposition? Are there any neutral testifiers?

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. The committee has asked relative questions. I will just add one thing. As I understand, there is the money provided for legal services for certain low-income people. I believe that there should be help for the pro se individuals. As a start, people who ask for help from the legal services and do not qualify would be given addresses, phone numbers where they may get help to represent themselves as pro se in court. And this would not cost anything. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Hedrick? Seeing none, thank you. Are there neutral testifiers? Senator Brashear...I believe Senator Brashear has waived closing. That will conclude the hearing on LB 643. To open on LB 429, Mr. Oligmueller. This bill, for the record, was introduced for the governor by Senator Brashear. Can I have a show of hands of those here to testify in support of LB 429? I see one, two. Could you hold your hands up? LB 429, I see seven. Those in opposition? I see none. Those neutral? So there are no

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opponents to the bill. Mr. Oligmueller. Welcome.

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GERRY OLIGMUELLER: (Exhibit 2) Senator Bourne and members of the Judiciary Committee, for the record my name is Gerry Oligmueller. It's spelled G-e-r-r-y O-l-i-g-m-u-e-l-l-e-r. I'm the state administrator and administrator of the Department of Administrative Services Budget Division. I'm appearing here today on behalf of Governor Heineman in support of LB 429. LB 429 was introduced at the request of the governor on behalf...as part of our budget package and relates specifically to the Supreme Court and Crime Commission budgets. It is a bill relating to court fees. The bill was included as part of the governor's package to provide the necessary revenue to support the recommendations for automation expenses with the Supreme Court and to continue ongoing support for operational costs of the Nebraska Law Enforcement Training Center. Section 1 of the bill would increase the court automation fee by 50 cents on each court filing from \$6 to \$6.50. This would increase revenue to the Court Automation Fund by slightly over \$200,000 per year. This is a primary source of funding for the automation efforts inside the Supreme Court system. Section 3 of the bill would continue the current \$2 court cost credited to the Law Enforcement Improvement Fund or the LEIF fund by eliminating the January 1, 2007, statutory sunset date for the collection of the fee. The January 1, 2007, sunset date was placed in statute as an amendment to Laws 2000, LB 994, the Open Enrollment Tuition Law. The enactment of LB 429 will ensure that the LEIF fee continues. If LB 429 fails to become law, the training center will lose nearly \$580,000 of existing budgeted revenue per year beginning on January 1, 2007. If the current sunset date is allowed to stand, the removal of this \$580,000 of existing LEIF revenue per year will either cause one of the three following situations: a substantial program cut to the operation of the training center; the need to replace the Cash Fund revenue stream with General Funds; or a dramatic increase in tuition rates to sponsoring law enforcement agencies or student candidates above that already planned and scheduled to take place on January 1, 2007, under existing law. Continuation of the LEIF fee is necessary to provide financial stability at the Nebraska Law Enforcement

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Training Center. When the sunset amendment was added to the LEIF fee it would have been nearly impossible to project the financial status of the training center seven to nine years later when its impact would be felt. I believe there will be testifiers following me from the Supreme Court and the Crime Commission that can specifically address the sections of the bill that are relevant to their agencies and I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Oligmueller? Senator Combs.

SENATOR COMBS: Does this increasing from \$6 to \$6.50 cause a problem for the previous testifiers that didn't like something ending in 50 cents?

GERRY OLIGMUELLER: Actually, the amount was arrived at, in part, as a consequence of discussions as we were preparing the governor's recommendations last fall and winter with the Supreme Court and they mentioned that specific issue. Part of my testimony I submitted in writing was a little bit more lengthy and I think that reference is actually in the paragraph in that written testimony.

SENATOR COMBS: Okay, thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: You can take Senator Pedersen first.

SENATOR BOURNE: Oh, Senator Pedersen.

SENATOR DW. PEDERSEN: Thank you, Senator Chambers, Senator Bourne. This would raise the fees on all court proceedings, is that right?

GERRY OLIGMUELLER: It's the LEIF fund fee is...

SENATOR DW. PEDERSEN: LEIF...

GERRY OLIGMUELLER: ...a court cost assessed in, I believe, all criminal cases.

SENATOR DW. PEDERSEN: And what would it do to the Law Enforcement Training Academy?



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GERRY OLIGMUELLER: The training center currently operates off of a combination of cash funds, the principal source of which is costs charged to attend these at the center for specialized training. The tuition that is planned to go in effect when they move to a tuition-based program for the basic training for law enforcement certification and then a General Fund appropriation so there's a combination of sources and we just try and balance that mix.

SENATOR Dw. PEDERSEN: Could they raise the tuition? Has there been any talk about raising the tuition?

GERRY OLIGMUELLER: The tuition is going to be, according to the fiscal note, I don't rely on that because I think it was very well written. Hopefully, you have it in front of you but the tuition will be as planned \$4,173 and about another \$1,500 of costs related to books and other materials for a total cost to the student of \$5,673. I suspect it would be higher but for the existence of some General Fund appropriation for the training center as well. Mike Overton with the Crime Commission when he testifies following may be able to elaborate on how this might affect very directly that tuition fee.

SENATOR Dw. PEDERSEN: My interest here is strictly in the training center and the money that's talked about because there's quite a bit of money there.

GERRY OLIGMUELLER: Right. Sure.

SENATOR Dw. PEDERSEN: I think \$580,000 is quite a bit of money. But at the same time, when we're talking about the Law Enforcement Training Center, are we talking about that combined, the Highway Patrol and the other part or just the part that trains police officers and city and sheriffs?

GERRY OLIGMUELLER: The budget for the entire center is about \$1.7 million. The tuition-based program would be a component of that. Perhaps Mike can be more specific about exactly what percent of that is represented strictly by the law enforcement certification training program because they do offer some other training at the center beyond that, if you're talking specifically about tuition-based.

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SENATOR DW. PEDERSEN: Okay. Thank you.

SENATOR BOURNE: Further questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Oligmueller, are you familiar with the difference between revenue bonds and general obligation bonds?

GERRY OLIGMUELLER: Right.

SENATOR CHAMBERS: How are revenue bonds retired?

GERRY OLIGMUELLER: They...I suppose an example would be a residential facility on one of the college campuses rely on a source of revenue to finance the debt so...

SENATOR CHAMBERS: And the revenue is raised by use of the facility or so forth so...

GERRY OLIGMUELLER: Correct.

SENATOR CHAMBERS: ...that's how that. Now, a general obligation bond is retired by what funds?

GERRY OLIGMUELLER: Well, in Nebraska we generally are prohibited by the Constitution to be engaged in general obligation debt for purposes, for example, of financing the budget. So a general obligation would be we're relying on the general sales income tax, general tax receipts of a jurisdiction that engages in that...

SENATOR CHAMBERS: But the General Fund revenue of the state.

GERRY OLIGMUELLER: Yeah, yeah.

SENATOR CHAMBERS: Okay. Now, if I were to use that analogy here, it appears that with the ongoing attempts to increase funding by way of fees to support the court system and its operations, it be analogized to a revenue producing entity.

GERRY OLIGMUELLER: Could be.

SENATOR CHAMBERS: It must produce...okay. And we're not going to rely on General Funds. Now this bill would appear

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to bring together all three of the branches...Executive, Judicial, and Legislative. The beneficiary, at least one, would be the Judicial Branch. Is that true?

GERRY OLIGMUELLER: True.

SENATOR CHAMBERS: And the Executive branch would be implicated in this Law Enforcement Training Center plus the fact that the governor wants to do it this way so that he won't have to rely on General Funds. Is that true?

GERRY OLIGMUELLER: To a lesser degree in any event.

SENATOR CHAMBERS: And the third branch is the Legislature which controls the purse strings.

GERRY OLIGMUELLER: Absolutely (laugh).

SENATOR CHAMBERS: Now, in order for this bill to be successful, there must be cooperation between and among the three branches. Would you agree?

GERRY OLIGMUELLER: Correct.

SENATOR CHAMBERS: If you wanted me to cooperate with you, would you slap me? I'm talking about you and me. If you came here and said, Senator Chambers, I want your cooperation and you slapped me.

GERRY OLIGMUELLER: You probably wouldn't give it to me.

SENATOR CHAMBERS: Right. The one who introduced this bill is the Speaker.

GERRY OLIGMUELLER: Um-hum.

SENATOR CHAMBERS: Why did he introduce it?

GERRY OLIGMUELLER: At the request of the governor. That's how the governor...the bill is necessary to operationalize specific recommendations that are part of the budget package are introduced.

SENATOR CHAMBERS: And the governor has expressed a desire to cooperate with the Legislature and receive the

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Legislature's cooperation. He's expressed that, hasn't he?

GERRY OLIGMUELLER: Yes, um-hum.

SENATOR CHAMBERS: Um-hum. Do you talk to the governor?

GERRY OLIGMUELLER: Yes, I do.

SENATOR CHAMBERS: You might advise him that he shouldn't slap somebody and then seek that person's cooperation. But here's the question I'm going to ask of you if you know the answer. Is this bill a priority bill for somebody?

GERRY OLIGMUELLER: No.

SENATOR CHAMBERS: So then if it doesn't go anywhere, the governor is going to have to request that the Appropriations Committee come up with General Fund money or those horrors are going to result. Is that true?

GERRY OLIGMUELLER: Well, the issue is in front of the Appropriations Committee, in fact, and was part of that agency's hearing so they are aware of the issue, and it is a point of coordination.

SENATOR CHAMBERS: So then we can just kill this bill and then the Appropriations Committee has to do its job. Isn't that true?

GERRY OLIGMUELLER: That is one option for the Legislature.

SENATOR CHAMBERS: Now if I was going to seek your cooperation and I slapped you, would you give me your cooperation?

GERRY OLIGMUELLER: I might.

SENATOR CHAMBERS: Okay, get away from here (laugh), get out of here (laughter).

GERRY OLIGMUELLER: I might (laugh).

SENATOR CHAMBERS: Thank you. That's all that I have (laugh). That was a good answer.

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SENATOR Dw. PEDERSEN: Any other questions from the committee? Seeing none, thank you.

GERRY OLIGMUELLER: Thank you.

SENATOR Dw. PEDERSEN: The next person to testify, please come forward.

MICHAEL OVERTON: (Exhibit 3) Mr. Chairman, Senators, my name is Michael Overton, O-v-e-r-t-o-n. I'm the acting director of Nebraska Crime Commission. We administer the Nebraska Law Enforcement Training Center in Grand Island. I'm here to speak to LB 429, talk about some of the impacts. Mr. Oligmuelle referred to this bill that's been around since 1971. It's provided a steady funding source and really only one of the funding sources relative to the training center. We actually see this bill, LB 429, as well as LB 426 combined and without their passage, having a significant impact on the funds available to the training center. It can have an impact not just on the Crime Commission and the training center but also on local law enforcement, local agencies, cities and counties, as they try to figure out how to fund training of certified officers in an ongoing manner. And I've supplied a spreadsheet which really is meant to try to inform and outline the impact of the nonpassage and passage, and I would just like to point out some things on that for you. The first sheet really reflects what the passage of LB 429 and LB 426 will result. And I mention LB 426 because I think the governor's recommendations as well as a number of the Legislature's recommendations assume the passage of both of those and the recommendations for the budget funding of the training center and other items. The two yellow lines that we see here really reflect just both the receipts that would come in as well as the expenditures. This assumes in the bold numbers the \$580,000 that would result in LB 429. The \$350,000 you see here is actually a reflection of LB 426. As you see from the line at the bottom of the page the results in the fund equity maintaining a balance of around \$200,000 over the years and the expenditures and the receipts basically staying about in balance. On the second page, though, just given the assumptions of the current funding and everything that is implied in that, without the funding of LB 429, on that third line you see one item listed in blue for \$290,000 for fiscal year '07. That

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basically reflects receiving the LEIF funds from the beginning of the fiscal year up to January 1. So when we talk about \$580,000 that \$280,000 is the receipts over half of this fiscal year until the sunset happens on January 1. And then zero happening there with the reflection of LB 426. We immediately see that the fund equity in the fiscal year '06 goes down to approximately \$1,000. In fiscal year '07 we have a deficit of approximately \$445,000 and by fiscal year '09 a deficit of \$1.5 million. There really aren't many options as far as other immediate funding sources or where to get the funds. We're really hoping you consider this as being a way of basically considering an ongoing source and a way that can have a limited impact on locals. We realize there are a number of options but we hope for your consideration on these bills. Questions from the committee? Senator Flood.

SENATOR FLOOD: Thank you, Senator Pedersen. Mr. Overton, thank you for your testimony. I have a question. On page 1 of your exhibit, what's happening...I have several questions actually. What's happening between fiscal year '06 estimated and fiscal year '07 estimated with regard to tuition? According to your numbers, your tuition is expected to jump from \$120,000 in FY '06 to \$328,500 in FY '07. What's causing that jump in tuition?

MICHAEL OVERTON: That's the reflection of the tuition-based academy and really going into effect with the statutory raise of the limit as of January 1, '07 and with that being an increase and going to kind of a fee-based, tuition-based academy.

SENATOR FLOOD: Is that...tuition-based academy. Are you anticipating more people will enroll or does that just solely reflect the increase in tuition?

MICHAEL OVERTON: I believe it's actually based upon the required statutory raise that Mr. Oligmueller was talking about earlier by going to \$5,744.70, I believe it was and really just reflecting that. Again, and I have to say that's an estimate because this whole program as we see it is really in transition now. We're trying to see the migration of students going through the community center but, (inaudible) point that out.

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SENATOR FLOOD: I guess then and these questions aren't because I have any agenda. I just am trying to better acquaint myself with what you do. And then we have here also on that page, it appears your expenses are going to increase from FY '04 your actual expenses from \$669,000 to \$1.25 million in FY 07. What's causing that increase over that short amount of time? You would probably agree with me, that's a fairly dramatic increase. Have costs risen or what is that?

MICHAEL OVERTON: I might have to refer back to Mr. Oligmueller since I'm acting. It's a little bit in transition so I'll qualify this...

SENATOR FLOOD: I understand.

MICHAEL OVERTON: But I think this is really a reflection of the colocation between the Law Enforcement Training Center and the State Patrol Academy. There's a big increase, a \$12 million increase in the facility that also had a big operational impact. And I think that's, to an extent, had an impact. Is that right, Gerry?

SENATOR FLOOD: So it's...maybe...he'll be up to close, hopefully, he can discuss that more. The State Patrol and the Grand Island Law Enforcement Training Center are now one and rather than being more efficient they're more expensive or are we taking some of the? I mean...

MICHAEL OVERTON: Within the whole academy, there's still the Law Enforcement Training Center and this might get to your earlier question, and the State Patrol Academy. There are a number of joined costs and a number of overhead that is reflected in the training center budget in terms of the operation of the facility. The patrol no longer operates the facility in Lincoln, for instance, so now all of that overhead is really reflected in Grand Island.

SENATOR FLOOD: And the patrol's facility so was that a General Fund obligation?

MICHAEL OVERTON: I'm not sure but I believe it was.

SENATOR FLOOD: So this essentially represents a General Fund obligation that's now coming under one roof, State

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Patrol, and local law enforcement together.

MICHAEL OVERTON: Correct.

SENATOR FLOOD: Thank you very much, appreciate it.

MICHAEL OVERTON: You bet.

SENATOR Dw. PEDERSEN: Any more questions from the committee? Senator Chambers.

SENATOR CHAMBERS: Mr. Overton, how did this sunset get into place, if you know?

MICHAEL OVERTON: My understanding was it was passed as part of the legislation in 1971 but I haven't seen the original legislation.

SENATOR CHAMBERS: Would you be surprised if somebody on this committee may have had something to do with that?

MICHAEL OVERTON: No, I wouldn't.

SENATOR CHAMBERS: And you said it was put in place in what year?

MICHAEL OVERTON: My understanding is 1971. That was when the original LEIF fund was passed...

SENATOR CHAMBERS: The sunset...

MICHAEL OVERTON: ...I don't know about the sunset.

SENATOR CHAMBERS: Oh, okay. Check on the sunset.

MICHAEL OVERTON: Okay.

SENATOR CHAMBERS: But here's the question. If the sunset were put in place several years ago, could not something have been done in contemplation of that impending sunset to accommodate it or was the only thing considered was the possibility of getting the Legislature to do away with it?

MICHAEL OVERTON: I'm not sure. I wasn't part of those discussions. I would hope that there was some discussion of



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options. I think part of the whole discussion of the tuition-based academy had a hope of a generation of income and a generation of expenditures. And I guess actually the sunset, I believe, was set relative to that now so...

SENATOR CHAMBERS: Have you appeared before the Appropriations Committee on any proposals that would provide funding for the Law Enforcement Training Center?

MICHAEL OVERTON: I haven't personally other than this bill. We appeared last week. If you talk about over the last several years, I'm not sure if the Crime Commission has or not.

SENATOR CHAMBERS: Has somebody appeared before the Appropriations Committee? You're saying they have or they haven't?

MICHAEL OVERTON: I appeared a week ago relative to LB 429, right.

SENATOR CHAMBERS: Oh, at the Appropriations Committee.

MICHAEL OVERTON: Correct, yes.

SENATOR CHAMBERS: So if this bill croaks then you're in a position to go back to the Appropriations Committee and point out that now it's up to them.

MICHAEL OVERTON: We pointed that out at the time.

SENATOR CHAMBERS: That if a bill...

MICHAEL OVERTON: We pointed out there were three basic options if the bills didn't pass. One was a need for General Funds; one was a need to significantly raise tuition which is also largely seen as really being prohibitive for local agencies. It could have a significant impact both on individuals as well as cities and counties that need to fund sending officers to the training center. And then the third option would be a decrease in the services provided by the training center.

SENATOR CHAMBERS: And why would it be prohibitive on local law enforcement agencies to raise the tuition?

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MICHAEL OVERTON: In some cases it would be prohibitive and some cases it would be very burdensome. Maybe I should have phrased it that way.

SENATOR CHAMBERS: Could the people who go to school do a little work like they do students? They have a work program at the university. You work and have some of your tuition costs remitted for that? Could they do a little work around the grounds?

MICHAEL OVERTON: I'm not sure we have internships out there at the moment, if that's what you mean. But...

SENATOR CHAMBERS: That's all that I would have, though. Thank you.

MICHAEL OVERTON: Okay.

SENATOR Dw. PEDERSEN: Senator Chambers. Any further questions from the committee? I'd have a couple, Mr. Overton, beings you're with the Crime Commission. Has there been any more talk or any ambition put towards the part of having some of these people, and I'm talking about the law enforcement academy, transferring some of them courses out to the community colleges?

MICHAEL OVERTON: Right. And that's really part of the whole transition to this community college-based shared tuition-based and tuition-based system that they're really supposed to kick more in 2007. The training center is currently working with the community colleges. They have an agreement with the community college system to try to recruit students, to let them be aware of that. And we have started to have some students show up that have taken some of the coursework at the community college level and then pay their own tuition by the training center to go in. So they don't necessarily have to be sponsored by a local law enforcement agency.

SENATOR Dw. PEDERSEN: Are we charging those people who come in and paying their own tuition, enough tuition to cover all their expenses?

MICHAEL OVERTON: My understanding is, I believe so, yeah, I

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believe so.

SENATOR Dw. PEDERSEN: For the life of me, I can't understand why in law enforcement and I'm a supporter of law enforcement, why we have to pay for their education. I mean, we don't do it in any other occupation. We don't do it in the legal field. We don't do it in the counselor field. We don't...and I can understand having a testing set up and certification process set up. They have to do certification. But why we have to pay for the training is beyond me and I think that's one of our reasons that we don't have enough certified officers because we don't have enough people getting the training. And that doesn't mean we can't set up a process to say that they have to pass a test and get through it. But this training academy by itself has been kind of a thorn, as you know, in my side all along and we're paying for that education anyway.

MICHAEL OVERTON: I think that's part of the hope of the new system is (inaudible). The intent is to really build up a professional base of people who independently can decide they want to go and get a degree or an associate degree, whatever it might happen to be at a community college level and then complete that certification training at the training center of their own volition and have that certification allowing them to be hired by whatever agency. Currently, it really is driven by an agency needing to send somebody for certification and I think that's really part of the hope is to really build up a group and a hiring group, a hiring pool of people who want to be professionals, who are willing to contribute both the time and the money to them.

SENATOR Dw. PEDERSEN: Thank you. Any other questions from the committee? Seeing none, thank you, Mr. Overton. Will the next testifier please come forward in support?

FRANK GOODROE: Good afternoon. My name is Frank Goodroe and the last name is spelled G-o-o-d-r-o-e and I serve as the state court administrator. I'll keep my comments very brief. We are supportive of the legislation which would result in raising the court automation fee from \$6 to \$6.50. This would generate approximately \$229,000 assuming a high collection rate. Reality may be a little bit less than that. I spent a little bit of time going through the history of the fund and it started out in 1993 at \$3. And

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then it was established at \$6 in 2002. And that automation fund generates about \$2.7 million, something like that. And that is how we fund our whole justice system, our whole technology package. The computers and terminals and printers that are located in the county and district and juvenile courts, the whole program itself, our communication cost be it in Arthur County or Douglas County, we rent the terminals and equipment through IMS and the fund is, frankly, somewhat in trouble as far as sufficiency. So, I was very pleased that the governor and the Speaker were willing to bring this piece of legislation forward. The only other comment I would make is the court does handle the collection of the Law Enforcement Improvement Fund. In my information here indicates that that was started in 1972 as Senator Chambers was mentioning at a dollar. But it applies only to criminal proceedings, traffic infractions, and misdemeanors, not the other case types. Thank you.

SENATOR DW. PEDERSEN: Thank you, Mr. Goodroe. Questions from the committee? Senator Flood.

SENATOR FLOOD: Thank you, Senator Pedersen. Mr. Goodroe, I want to compliment the court. Maybe you could tell me more about this. On the state web site the other day I noticed that you can access information about court cases statewide by county, attorney name, by party name. I didn't know that existed. And I think that's beneficial to include the public in the branch of government that's often the most absent in a public forum. Will this money help make those court records more accessible with going to the personal computer type software?

FRANK GOODROE: Right. It has been...it's actually been available for about 14 months. Literally, the day that I arrived and I had no responsibility for accomplishing that. But there is a combination of ways. Those that have access to NCJus (phonetic), the criminal justice system are able to access all cases within our justice system. Also, through Nebraska on-line, you as a citizen lawyer would be able to access it but there is 35 cents a case or 50 cents a case or you can pay a flat fee on a monthly basis. The unique thing is that you can search the records anywhere in the state. And that is actually one of the...we're one of very few places that have that in the country.

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SENATOR FLOOD: Do you ever foresee...say I want to find a divorce petition in Scotts Bluff County. Will we ever have those available on PDFs so that those records that are public records are accessible? I know right now you probably get information about who the attorney is, what the case is, where it's at.

FRANK GOODROE: Right. You get the skeletal background, you get the docket...

SENATOR FLOOD: Yeah.

FRANK GOODROE: ...all of the docket entries. As far as the actual looking at the documents, that really is document imaging where we scan the documents into the system. And such a feature is available right now in Lancaster County on a pilot basis. And we're talking right now, in fact today, with the county court in Lancaster on probate matters. And we also have a...this is in place as far as document imaging in Douglas County District Court but they're not in the justice system. But it's certainly feasible, it obviously requires scanning of all of the documents into a system and that is costly and time consuming and requires a great deal of storage capacity on your computer system.

SENATOR FLOOD: And one last question. Do you ever see us going to an electronic filing system similar to the system the U.S. Bankruptcy Court has or the federal court has so that all that information would be available and accessible on-line, making the court more accessible to people?

FRANK GOODROE: Well, it's kind of interesting that in my history in the past, I spent 12 years in the federal judiciary and was actually pretty active in, particularly in the bankruptcy court because I was an executive officer in Los Angeles, and we played a role in the development of that application as far as getting...you can pay a small fee and access every bit of bankruptcy case information anywhere in the country. Prior to that time, you couldn't find out anything from another district. You could only access the one district as opposed to all 93 of the federal districts. And so certainly we have a lot of interest in document imaging and doing...the name escapes me right now but where you actually file on-line, that process.

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SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Further questions? Seeing none, thank you.

FRANK GOODROE: Okay. Thank you.

SENATOR BOURNE: Next testifier in support?

JIM PESCHONG: Mr. Chairman, members of the Judiciary Committee, my name is Jim Peschong, P-e-s-c-h-o-n-g. I am here on behalf of the Police Officers Association of Nebraska and we are encouraging your support for LB 429. The passage of LB 429 will ensure that the current funding for basic law enforcement training will not go away and be left for local governments to find this funding from within their already strapped budgets. Current state law requires basic law enforcement certification for law enforcement officers and we wholeheartedly support this. Training is very important for the law enforcement profession. Currently, it costs in the neighborhood of about \$5,000 per student or officer candidate to receive basic law enforcement certification. If the LEIF funds are left to expire, local government entities will have to find the funding for new law enforcement officers some other place. Presently, the funding comes from a \$2 surcharge on the citation as part of the court cost. This, in essence, is a user's fee. If local governments become forced to fund this added cost it will more than likely have to be generated from property tax assessment. We believe the current revenue source for training law enforcement officers is appropriate and needs to be retained. POAN supports the concept of partnering with colleges and universities in order to provide the academic portion of basic law enforcement training while having the skilled portion provided by the Nebraska Law Enforcement Training Center. This concept allows for the ability to deal with growth demand as well as encouraging cost sharing. However, this is a large undertaking and still needs more time to evolve before the concept is viable. We need your continued support in order to ensure that adequate funding is available for well-trained men and women to provide professional law enforcement services to the citizens of the state of Nebraska. Passage of LB 429 will ensure that we will continue to move forward in order to enhance the profession with quality men and women. I'll answer any

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questions if you have any.

SENATOR BOURNE: Questions for Mr. Peschong? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Peschong, you're with the Lincoln Police Department, are you not?

JIM PESCHONG: Yes.

SENATOR Dw. PEDERSEN: You train your own people, don't you?

JIM PESCHONG: Yes, we do.

SENATOR Dw. PEDERSEN: You don't use the Law Enforcement Academy.

JIM PESCHONG: Only for specialized training that may be offered out there and we send some people.

SENATOR Dw. PEDERSEN: If I were a police officer and I can't remember which states they were but they were some...let's say Colorado and I came to you in Nebraska to be a police officer here and I've had all the training. Whatever it may be. If it's homicide, forensics, how to subdue somebody, how to shoot, whatever it is, and they had all that training and had a good background. What would I have to go through to become a police officer here?

JIM PESCHONG: I may be in error on this, okay, but my understanding is that you still must be certified by the state of Nebraska. Actually, we have an officer that came to us from Colorado currently in our...just graduated from our academy. Officers that are certified or have received certifications from someplace else, what we will do is we will allow them to test such as search and seizure or whatever. If they feel that they have the skillset we'll give them the same test that we would give the class after the instruction. If they can test out of it and prove their proficiency then we will then move them on. Anyone that we've ever hired along that line, they've chosen to sit in the class and take the class right along with the rest of the students.

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SENATOR Dw. PEDERSEN: Wouldn't you think that we could sometime get some of these courses that are taught in the colleges and paid for by the students and have all that training and come to us? That all we'd have to do is test them and check their backgrounds and make sure they're good people?

JIM PESCHONG: Yes, and that is the goal, Senator. Maybe I could move this on to Sheriff Terry Wagner who's probably much more attuned in regards to all of this process but this has been going on. The training center has been working on this for several years. It's just that they haven't been able to get everything finalized and in place but dialogue with junior colleges and the universities has been going on regarding this to try to get the academic side done within the colleges and the skillsets would be done at the training center such as self defense, shooting skills, and things of that nature would be done out there.

SENATOR Dw. PEDERSEN: And the academics I'm aware of because I'm the one who carried that bill at that time. But don't you think them other things, skills could be also taught?

JIM PESCHONG: If the interest is there in the colleges and universities to do that. It's my understanding that that necessarily isn't there but I really can't speak to that very well.

SENATOR Dw. PEDERSEN: And we've got hundreds of people who want to be police officers and I'm not saying they should all be police officers but if they had the training and paid for it all themselves we could save ourselves some money. Thank you.

JIM PESCHONG: Yes, Senator.

SENATOR BOURNE: Further questions? Mr. Peschong, maybe this was covered. I had to step out for a minute but why was there a sunset provision in the original bill if you can recall?

JIM PESCHONG: I can't recall. I don't really know any history on that. Senator Chambers maybe kind of alluded to something on that, (laughter) on a prior testimony. But I



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don't really know.

SENATOR BOURNE: I did. I'll discuss it with him.

JIM PESCHONG: Okay.

SENATOR BOURNE: Further questions? Seeing none, thank you.

JIM PESCHONG: Thank you.

SENATOR BOURNE: Next testifier in support?

TERRY WAGNER: Good afternoon, Senator, members of the committee. My name is Terry Wagner, W-a-g-n-e-r. I'm the sheriff of Lancaster County and I appear before you today representing the Nebraska Sheriffs Association. The Nebraska Sheriffs Association urges the support of LB 429 specifically pertaining to the LEIF funds for the Law Enforcement Training Center. In answer partially to your question, Senator Pedersen, I am on the Police Standards Advisory Council. We have worked, I know for the ten years that I've been on the council, moving toward a tuition-based academy and I can address that further on specific questions. But that process has just not moved on and has not moved along as quickly as had been hoped. The other issue is, especially in the last three or four years with the number of applicants diminishing, some agencies felt the need or felt that there would be a need to use the tuition as a recruiting and marketing tool to employ or to recruit new officers. So those two things combined have generated less tuition-based students than had hoped and I honestly do not know when the tuition-based program will be self supporting but the LEIF funds are necessary to maintain the training center and the basic student academy. I'd be glad to answer any questions the committee might have.

SENATOR BOURNE: Questions for Sheriff Wagner? Seeing none, thank you.

TERRY WAGNER: Thank you.

SENATOR BOURNE: Next testifier in support? Is this the last testifier in support? If the other opponents, if there are opponents, would they make their way forward to the on-deck area? Welcome.

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MARY SOMMERMEYER: Senator Bourne and members of the committee, I'm Mary Sommermeyer. That's M-a-r-y S-o-m-m-e-r-m-e-y-e-r. I'm here on behalf of the League of Nebraska Municipalities and we don't have a position on Section 1 of this bill. We're only here on 2 and 3, the LEIF fund. And we just wanted to lend our support to additional, continued funding for the Law Enforcement Training Center.

SENATOR BOURNE: Thank you. Questions for Ms. Sommermeyer? Seeing none, thank you.

MARY SOMMERMEYER: Thank you.

SENATOR BOURNE: Last call for testifiers in support? Testifiers in opposition? Testifiers neutral? Closing is waived. That will conclude the hearing on LB 429. Senator Pedersen to open on LB 507.

LB 507

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne and colleagues on the Judiciary Committee. For the record, my name is Dwite Pedersen. I'm representing the 39th Legislative District and I'm here today to introduce to you LB 507. LB 507 amends existing law to provide that criminal defendants would have the right to review the content of their presentence investigation reports prior to sentencing. Current law provides that the court may...underline may, permit inspection of the presentence investigation report or parts thereof by the offender or his or her attorney. This bill provides that the court shall permit inspection by the defendant or his or her attorney. The bill also provides that the court may permit inspection of the report or parts of it by others having a proper interest. Under the provisions of this bill the defendants would also have the right to provide supplemental information to the sentencing court for their information. At the present time, if a person is in the custody of the state Department of Correctional Services a copy of the presentence investigation called a PSI is given to the department. Upon request, it can also be provided to the Board of Parole and the parole administration. LB 507 adds the ombudsman's

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office to the list of those who shall get the presentence investigation report upon request. Over the years, I have found out how important the presentence investigation report is. I have also been made aware many times that what is in the presentence investigation report is subject to disagreement as to the factual basis. The importance of this report cannot be underestimated as it follows an offender throughout the court appearances, his incarceration, and their release into the community. If there is information contained within that report that may be subject to a different interpretation it is not usually available to the offender. Some attorneys are better than others at requesting this information and going over it with their client. Others are simply at the mercy of what is written there. The bill simply allows for the information to be inspected by the defendant or his or her attorney and to provide supplemental information to the court if he or she wants to do so. It also allows for the state's ombudsman's office to review the presentence investigation report as part of their investigations into complaints regarding correctional issues and parole. I believe that this is only fair. When so much depends on what is written in a report, it is only right, in my opinion, that the person whose life and freedom depend on it have the right to inspect the contents and to have the opportunity to provide explanation or dissent to the statements contained within. I urge you to give every consideration to his legislation. Thank you for your time and if you have any questions I'd try and answer them for you.

SENATOR BOURNE: Thank you. Are there questions for Senator Pedersen? Seeing none, thank you. Could I have a show of hands of those here to testify in support on this measure? I see one. Those in opposition? I see none. Those neutral? I see none. First testifier in support.

MARSHALL LUX: Good afternoon, Senators. My name is Marshall Lux, L-u-x. I'm the ombudsman for the state of Nebraska and I'm here to testify in support of LB 507. As the members of the committee may be aware, the ombudsman's office receives a significant number of complaints from inmates in the Nebraska correctional system. And in our experience, many of those complaints relate to what are classification issues. Classification is the process whereby the correctional staff look at an inmate's history

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to decide how the inmate is going to be situated in the security system, whether medium custody, minimum custody, and to determine the content of the inmate's personalized plan which will include whether the inmate will be required to take treatment for substance abuse and so forth. This classification process can have a tremendous impact on issues like the inmate's parole prospects and it is often determined, based upon information contained in the inmate's presentence investigation report, particularly information on the inmate's criminal history and the history of involvement with substance abuse. Over the years in looking at inmate complaints about classification, our office has found that inmates have often been classified by the Department of Corrections based upon an erroneous interpretation of information in the presentence investigation report. In other words, the department looked at the presentence investigation report but read it wrong. And it's our job then to point that out to the department. Obviously, if we're going to work on this kind of case then we need to have access to the presentence investigation report that the department is relying upon to make its classification in a particular case. For many years, we have had access to those documents without any trouble from the department but in 2004 the department decided that it could no longer share the presentence investigation reports with our office, citing Section 29-2261, the statute which would be amended by this bill. The department took this position in spite of the fact that our own statute, Section 81-8,245 states that we are to have access to documents in the department's control, "notwithstanding any other provision of law." Frankly, this decision by the Department of Corrections was part of a disturbing pattern of efforts by the agency to raise these kinds of barriers to our ability to investigate complaints. And we're hoping that the committee and the Legislature generally will support our efforts to carry out our statutory duties in addressing these kinds of complaints and we'd encourage the committee to advance this bill as a step in that direction. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Mr. Lux? Senator Chambers.

SENATOR CHAMBERS: Mr. Lux, where in the bill does it authorize the ombudsman's office to have access to the

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report?

MARSHALL LUX: It is in one of the letters (inaudible).

SENATOR CHAMBERS: Oh, I see it. It was called to my attention by our counsel. Thank you.

MARSHALL LUX: Yes. Okay.

SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Further questions? Mr. Lux, what year did you say the department stopped giving you the report?

MARSHALL LUX: Last year, Senator.

SENATOR BOURNE: Last year, okay.

MARSHALL LUX: Um-hum.

SENATOR BOURNE: Further questions? Seeing none, thank you.

MARSHALL LUX: Thank you.

SENATOR BOURNE: Other testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Pedersen to close.

SENATOR Dw. PEDERSEN: I wouldn't usually close but I just want to add a short bit to this. The ombudsman's office did not come to me and ask me to carry this bill. That was something that we decided in my office to put in the bill because the ombudsman by the Department of Corrections was told that they couldn't have this impression any more. I want you to know the main reason I brought this bill is a former colleague of ours had a son in court in Sarpy County last year and the son got pretty well nailed by the court system and the defense attorney was not allowed to see the presentence investigation prior to that hearing. And I did not know at that time until it was brought to my attention that it does not say in the law that they have to share the presentence investigation. I think it's only fair that a defense attorney has the availability of seeing that. And that's where it virtually came from but to add the ombudsman there so we can take care of some more legal problems in the Department of Corrections is the only reason that's in there

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too. Any questions, I'd be glad to answer them.

SENATOR BOURNE: Thank you. Questions for Senator Pedersen? Seeing none, thank you. That will conclude the hearing on LB 507. The committee will stand at ease for ten minutes.

RECESS

SENATOR BOURNE: Again, reconvene. Could I have a show of hands of those here to testify in support of LB 713? Hold your hands up, please. One, two, three, four. Those in opposition? No opponents. Are there any neutral testifiers? I see none. It's your day. Senator Thompson to open on LB 713.

LB 713

SENATOR THOMPSON: (Exhibits 4, 5) And I have a handout for the committee and also a letter from a person who wasn't able to be here that I'll just leave for the committee. LB 713 is the work of a task force that was put together by the Attorney General, a group of people working to improve our sexual assault statutes and a number of suggestions were made and they are part of this bill. What I'm handing out to you is an outline of the original bill with an amendment. Some parts of the bill have generated some interest from a number of people who have been contacting me. And so what I wrote was an amendment with the things that seem to have the most support and then a few that are below the line, one of which a number of people have an interest in and I'm certainly supportive of keeping that in the bill. But at this point, it's not in the amendment but there are people who are going to testify to that effect. One in eight people or 84,000 women in Nebraska have been or will be a victim of sexual assault. And what these recommendations do is improve that system by the following. First is to utilize a standard sexual assault evidence collection kit for victims statewide. And the bill provides that the Attorney General's Office would work with that particular definition. Second is to provide for the collection of forensic evidence by medical professionals with the consent of the victim without separate authorization by a law enforcement agency. And this piece was brought by the medical professionals who felt that they could go ahead and

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do this without having to either delay the process or by having to get that separate authorization from law enforcement and that would improve and streamline the process. The fourth bullet refers to the federal evidence rules and this would bring Nebraska law in conformance with the federal evidence rules 413 and 414 permitting evidence of a defendant's commission of other offenses of sexual assault in a criminal case. And Don Kleine is here from the Attorney General's Office and will be able to discuss that with you further. And last year we lifted the statute of limitations on sexual assaults against children and this amendment would lift the statute of limitation for sexual assaults against adults. In the original bill, there was a process by which the DNA would be kept on file for three years but would provide that prosecutors could file charges within one year from the date of the perpetrator's DNA profile having been positively matched to the individual. And it also provided a method by which the hospitals would collect that information or collect the DNA and law enforcement agencies would keep it on file. It seemed that this got into a number of issues with who was collecting, how was it numbered, all those kinds of things and so it would be my view to just lift the limitations so that DNA evidence could be used at any point in time. And Don Kleine will also be able to talk to you about that and it should say statute of limitations, I think here on this deal. And, however, you know, I'm certainly willing to go back to the original language if that would be what the committee's desire would be but with DNA testing happening, we're able to identify people at much later dates on who may be the perpetrator of the serial crimes that have happened and that actually has happened and we need...it seems to me maybe the slickest way to do that would be to lift the statute of limitations just as we did for children. The other area that was pointed out by the task force is something that's important. We're not exactly sure how to do this but it is the anonymous reporting and the mandatory...no, excuse me, it's the second bullet there, to change the mandatory reporting law for healthcare providers so they are not required to immediately report a sexual assault to law enforcement officials without the victim's consent if the victim is 18 years old or older. We did receive a concern from a hospital that does a lot of this work in the metropolitan Omaha area. They wanted more time with this but there are people here to testify today. It's

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very important that we do lift this. I don't know if this is the year and this is the bill when we can get it done. But if...I'd be happy to work with the committee on this issue, it's very important. And so the red light is on so I will quit talking.

SENATOR BOURNE: Thank you. Questions for Senator Thompson? Senator Thompson, what is the current statute of limitations in?

SENATOR THOMPSON: Three years.

SENATOR BOURNE: Three years. Oh, okay. Have other states extended that or eliminated that for this particular crime?

SENATOR THOMPSON: I believe so. I will double-check that. I read the task force report a few months ago, and I remember that coming up at the beginning of this discussion and I will find that out for you. I think that's a trend in the child side that we've been seeing on sexual assault because people who are perpetrators of these kind of crimes tend to do this for over a lifetime.

SENATOR BOURNE: Do you remember the policy reasons behind extending that for the child?

SENATOR THOMPSON: Well, the child, one, was...because people come to terms with these issues that happen in their childhood, often at a later point in life or they may still be dependent upon the perpetrator. Oftentimes it's, you know, might be a stepparent or some other family member. And it's a little different from the adults in this...an adult sexual assault. But a lot of the things that happen to people in terms of going through the trauma of it, trying to figure out how they can identify the person if it's someone that they don't know. And there have been a series of these rapists who have done this over a course of years and they're able to go back now because of the DNA evidence. The alternative is to issue a John Doe based on the DNA evidence and Don Kleine from the Attorney General's Office will be able to talk about that method. He has used it before when he was a county prosecutor. It would be, I think, from a procedural and criminal justice point simpler to just eliminate the statute of limitations but there are some ways around that in current law if that prosecutor



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would be aware of that and would be willing to try to do that kind of a deal.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

SENATOR THOMPSON: Thank you.

SENATOR BOURNE: First testifier in support. (See also Exhibit 6)

DON KLEINE: Good afternoon. My name is Don Kleine. That's K-l-e-i-n-e. I'm here testifying in support of LB 713. I'm the chief of the criminal division for the Nebraska Attorney General's Office. I would echo the statements of Senator Thompson and I'll briefly address the two issues that I'm here to address and that's the change in the rules of evidence to adopt the somewhat federal rule of evidence in admitting prior sexual assault evidence in a sexual assault case here in Nebraska and changing the statute of limitations or eliminate the statute of limitations on sexual assault. First, with regard to changing the statute of limitations. We would be changing it to conform actually to the change that's been made with children. Currently, the statute of limitations with regard to a sexual assault on someone under 16 that doesn't exist. There's no statute of limitations. Nebraska criminal law provides that there's no statute of limitations on murder cases, sexual assaults on children, forgery, treason, kidnapping, and we would add sexual assault simply even with an adult to that situation, one of the reasons being and Senator Thompson mentioned this. And it came up when I was in Douglas County, I was asked at one time by the Omaha police, presented a case to me that the statute of limitations was about to run. It was a sexual case, three years time period was almost up. But what we had, we had forensic evidence that was taken from the victim of the sexual assault, a vaginal swab that had DNA evidence. The markers from that DNA were identified. The statistics showed, you know, a huge statistical elimination of people, you know, it was like one in several billion that this is one individual, obviously. And so, issued a warrant for John Doe, identifying John Doe as this person with these DNA markers. And that was a question as to whether that was even something that we could do at that time but it was to prevent the statute of limitations from

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running. So we might have cases where we could identify the perpetrator by DNA evidence at this time but we don't know who that person is. By eliminating the statute of limitations we won't have that problem. With regard to the change in the rules of evidence, currently, evidence of other sexual assaults is admissible under Rule 404 if it goes to...if it's relevant and it goes to a plan, motive, intent, those kinds of issues. This would eliminate that part of it and just say, it's admissible. If it's relevant and it would still pass evidentiary rule 403 in Nebraska Rules of Evidence which says even if it's relevant it's not admissible and the judge could still say it wouldn't be admissible if it's prejudicial. Probably the value is outweighed by a prejudicial effect. So a judge still has safeguards there but, as I said, the federal rules of evidence allow and simply blanket a statement of other sexual assault testimony is relevant and admissible in sexual assault cases. And we would ask our rules of evidence to conform with the federal rules in that regard. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kleine? Senator Friend.

SENATOR FRIEND: Thank you, Senator Bourne. Mr. Kleine, is this a...you've obviously had some situations that have occurred that would instigate a bill such as this, I mean, some frustrations in the past. Or maybe I shouldn't say obviously. Maybe there are some frustrations or some things associated with the potential prosecution of cases in the past that have spurred this type of legislation. I mean, and or are there other states that are moving in a direction...not that I'm looking for blueprints or anything else but this doesn't seem...is there a trend here? Is there a movement and is that why we're here dealing with this now, just curious?

DON KLEINE: On either issue or both issues?

SENATOR FRIEND: Well, I guess both or however you'd like to observe it.

DON KLEINE: The federal Rules of Evidence, as I state that this other evidence is admissible in any case if it's relevant. With...

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SENATOR FRIEND: So you're looking for some continuity...

DON KLEINE: Right.

SENATOR FRIEND: ...more or less.

DON KLEINE: And with regard to the statute of limitations, I think, yes, things are moving in that direction. There are other states that allow say, John Doe warrants, those kinds of things, to eliminate a problem with the statute of limitations so if there's something on file so the statute won't run but it seems one way or the other that if you can identify the perpetrator by genetic markers that we...and just let the statute of limitations be allowed to run so that we can prosecute this person once we can identify who those genetic markers match up with.

SENATOR FRIEND: Okay, thanks.

SENATOR BOURNE: Further questions? Mr. Kleine, I haven't really thought about the statute of limitations so I'm not necessarily opposed. I'm just kind of exploring this. When a person is convicted now for sexual assault does or do their DNA go into some sort of a database? I mean, I don't know how this works. How would you run the database from a sexual assault victim against a potential suspect? Or is it on a case by case or do you run this in a computer...?

DON KLEINE: Could be on a case by case basis. Say you might have forensic evidence that comes from another case...

SENATOR BOURNE: That has similar...

DON KLEINE: ...and all of a sudden you say, well, we know it's the same person because the forensic evidence we got from this victim matches the forensic evidence in this victim so we know we have maybe a serial rapist out there. And then whatever evidence you might develop, maybe somebody saw someone in that particular case and can identify them or there might be some other evidence. Then you can relate that to the other, you know, you find out who that person is but it matches up with the original sexual assault. The first part of your question, though, was there is a law in Nebraska regarding this national database that's called

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CODIS, I think Criminal Offender DNA Database. There are certain crimes that if you're convicted of, there's a sample of your DNA take and it's put into this national database. And certainly, if you have forensic evidence, a DNA set of markers, genetic markers you have from a case that's unsolved, you submit that to the national database and you may get a hit. And that's happened in certain cases and you find out who that individual is from the genetic markers and that DNA database.

SENATOR BOURNE: Okay. Further questions? Senator Chambers.

SENATOR CHAMBERS: Mr. Kleine, does this language that talks about the admissibility of evidence relative to the commission of other offenses, does not require that the person had been convicted, does it? Of these other...

DON KLEINE: No, that's absolutely right.

SENATOR CHAMBERS: So accusations can be used in another case of accusations and there's no limit to the number that can be used under this proposed change, is there?

DON KLEINE: Well, I think that in any case there could be a pretrial hearing where the judge might determine that, to make sure that that's admissible evidence in the first place. The defense might file a motion (inaudible) and say, we have a question about the admissibility of this evidence and the jury shouldn't even hear this evidence. But you're right, it doesn't have to be a situation where the person is convicted. It's other evidence of sexual assaults.

SENATOR CHAMBERS: If there's strong evidence that a person committed the crime in chief, the case that we're looking at, why do we need to allow these kind of accusations to come in when under current Nebraska evidence rules it cannot?

DON KLEINE: Well, that's a good question because, you know, again the facts of the case you're talking about should be the things that convict the person. But in these types of crimes and especially I think when we're talking about crimes that deal with children, the fact of the matter is that this is character evidence to some extent because

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you're showing that this person has propensity to commit these types of crimes, say, against children, that they're previously sexually assaulted several children maybe even and been convicted of that. And that's relevant and should be a part of what the jury can look at in those kinds of cases.

SENATOR CHAMBERS: But there doesn't have to have been a conviction. There could be accusations and that kind of...because of the nature of the crime that kind of evidence is extremely inflammatory and it could prejudice the jury and blind it to anything else because well, yeah, they say he was accused of that but he wasn't convicted. He probably did it so we'll get him this time.

DON KLEINE: And you mentioned in Nebraska that wouldn't be allowed but in certain cases, for instance, like the David Burdette was a serial rapist that was sexually assaulting women from Omaha magazine years ago but did time in the penitentiary, got out and did some other sexual assaults. In a Nebraska law, that 27-404, it's admissible if it goes to plan, intent, motive, opportunity, identification. There's a specific portion that previous evidence of this other crime has to go to in the current crime.

SENATOR CHAMBERS: But not propensity. It's not like saying...

DON KLEINE: Right.

SENATOR CHAMBERS: ...he was accused of this before so he probably did this one today.

DON KLEINE: Exactly. That's exactly right. And there are other safeguards in that. The court still has to find that this evidence of other prior conduct is relevant, number one, to something with the current case and number two is, it still has to pass that 27-403 test that says that even though it's relevant it's probative value isn't outweighed by its prejudicial effect which is what you're talking about.

SENATOR CHAMBERS: And that, I know, is the language but I don't find that to be very comforting when we're changing an established rule to do this. So let me ask you this.

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Without this material, would you still support the bill?

DON KLEINE: Yes.

SENATOR CHAMBERS: Okay. Now, I didn't start really looking at it until I got here today. This part about somebody else being...oh, on page 3. Every healthcare professional as defined in a certain statute or any person in charge of any emergency room or first aid station, what is a first aid station?

DON KLEINE: I don't know the answer to that, Senator. I think there are other people to testify regarding that portion. I just was here regarding the rules of evidence and DNA.

SENATOR CHAMBERS: Oh, okay, then this other I'll save. Okay, that's all I would have.

SENATOR BOURNE: Thank you. Further questions for Mr. Kleine? Seeing none, thank you. Appreciate your testimony. Next testifier in support.

MARLA SOHL: (Exhibit 7) Good afternoon, my name is Marla Sohl, M-a-r-l-a S-o-h-l. I'm the sexual violence program coordinator for the Nebraska Domestic Violence Sexual Assault Coalition. Our coalition represents the 19 programs across the state that provide crisis intervention services to sexual assault victims. I am here in support of LB 713 and will be talking specifically about ending mandatory reporting for medical providers. I believe that the changes proposed by LB 713 will increase the number of sexual assault victims who come forward to receive immediate medical care, use rape crisis center services, and voluntarily report to police. My testimony is going around as well as a letter of support from the Omaha YWCA. These changes are urgently needed. Because of the current mandatory reporting law, many victims do not seek medical treatment because they are afraid to report the assault. According to a national survey, approximately 70 percent of victims worry about other people knowing that they had been sexually assaulted and blaming them; a smaller percent worried about contracting a sexually transmitted infection or HIV/AIDS. Unfortunately, the victim's fear of being blamed for causing her own assault takes precedence over the

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concern for her own health. Public perception is that most rapes occur between strangers; the reality is 84 percent of rapes are perpetrated by an acquaintance of the victim. In 2003, Nebraska's sexual assault crisis centers served about 600 sexual assault victims. Consistent with national statistics, the victim knew the perpetrator in 80 percent of these cases. Seventy-two percent of these victims didn't report the crime to law enforcement and 82 percent did not seek medical attention. In Nebraska's rural communities victims often share social circles with the perpetrator and know that reporting a rape may throw her entire world into chaos, jeopardizing everything she values and depends on, from friendships to her paycheck. This is dually compounded if the perpetrator is a well known member of the community. For these reasons, current law does a better job of offering a safety net for sex offenders than their victims since perpetrators expect the victim won't seek assistance. And, unfortunately, the many who do find the courage to report find that they are not believed. The revision to state statute 28-902 that currently mandates healthcare providers immediately report the crime to law enforcement irrespective of the victim's wishes is one of the key recommendations from A National Protocol recently released from the U.S. Department of Justice. The protocol states, "Where permitted by law, patients, not healthcare providers (sic), would make the decision to report a sexual assault to law enforcement. Patients should be provided with information about the possible benefits and consequences of reporting so that they can make an informed decision." "It is not recommended to require reporting as a condition for (sic) performing or paying for the exam." Open to any questions. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Sohl? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Ms. Sohl, thank you for your testimony today and I 100 percent agree with what you're saying. One of the questions I had of the 600 victims of sexual assault that sought guidance from an assault crisis center, are you...would a domestic violence crisis center be considered a healthcare provider? Were you required to report that?

MARLA SOHL: No.

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SENATOR FLOOD: Okay. So they come to you and they report that they've been sexually assaulted. Does this force them to go to the doctor and have to make up some story as to why they want a test sometimes or to evade the real reason they're there so that they don't trigger this automatic reporting requirement?

MARLA SOHL: Well, certainly some victims don't want police called for one reason or another and if they are aware of the fact that police will be...that it will be reported to police they may, in fact, yes.

SENATOR FLOOD: Do not.

MARLA SOHL: Um-hum.

SENATOR FLOOD: In fact, you probably have to counsel them so that they know what to expect if they were to report it.

MARLA SOHL: Yeah, we try to give them as much information as we can so that they have all of the pertinent information for making that decision.

SENATOR FLOOD: What about like a mental health practitioner or a counselor, somebody that provides counseling advice to individuals for hire. Are they considered healthcare professionals?

MARLA SOHL: I don't know that answer. Perhaps someone else will...

SENATOR FLOOD: Somebody else might know that. Well, it would seem to me very troublesome if they do seek some type of professional counseling and they can't really share with the counselor why they're upset.

MARLA SOHL: Oh, I agree.

SENATOR FLOOD: And if they're in this it's even more compelling for me to support it but I don't have anything else. I appreciate your being here.

MARLA SOHL: Thank you.



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SENATOR BOURNE: Thank you. Further questions? Senator Chambers. (See also Exhibit 8)

SENATOR CHAMBERS: Looking at the amendment that I was just shown because I wasn't here when the hearing opened. Have you seen a copy of the proposed amendment?

MARLA SOHL: Yeah, right before I came up, um-hum.

SENATOR CHAMBERS: Okay. And what I'm going to talk about is very similar to what's in the green copy. It would be the Section 3. Every healthcare professional as defined by the statute or any person in charge of any emergency room or first-aid station in this state. What is a first-aid station?

MARLA SOHL: I had a feeling you would ask. I don't have that information but we have a doctor who's going to testify so maybe he would have a better idea.

SENATOR CHAMBERS: I'm beginning to feel like the troll under the bridge (laughter), little Billy Goat Gruff. Wait till my big brother comes. Okay, I'll wait.

SENATOR BOURNE: Further questions?

SENATOR CHAMBERS: But wait a minute, I'm not...I have another question. After we get past that. Shall utilize a standardized sexual assault evidence collection kit approved by the Attorney General and shall collect forensic evidence with the consent of the sexual assault victim without separate authorization by a law enforcement agency. What becomes of this evidence once it's collected?

MARLA SOHL: I believe that it is then the property of the law enforcement agency for the next, I think, they recommended three years.

SENATOR CHAMBERS: I don't think that's in the amendment. But anyway,...

MARLA SOHL: Well, again, I just saw the amendment right before...

SENATOR CHAMBERS: Okay, well, I want to get to something...

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MARLA SOHL: Okay.

SENATOR CHAMBERS: ...that I think you might can discuss with me and maybe not. I'll wait till the doctor comes.

MARLA SOHL: Okay (laughter).

SENATOR CHAMBERS: Thank you.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Next testifier in support. Welcome.

JENNIFER SCHWEER: Hi, I'm Jen Schweer, S-c-h-w-e-e-r. I'm a counselor and the sexual assault services coordinator with the Rape/Spouse Abuse Crisis Center here in Lincoln. We work with the victims of sexual assault on many levels at our agency. As they navigate the medical and legal process and as they try to work through their assault in order to find long-term healing, for victims this can mean many things. Every case is individual and each person's process may entail a variety of choices along the way. The reason I'm here today is to talk about the ways LB 713 can assist in a victim's long-term healing specifically with the removal of the mandatory report. Currently, when a victim goes to the hospital after being sexually assaulted, the police must be called along with an advocate. However, victims go to the hospital for many different reasons. They may be seeking medical treatments for injuries sustained during their assault, be concerned about becoming pregnant or contracting a sexually transmitted infection. Victims of sexual assault have just experienced a major trauma. They're making important decisions while still in a state of shock. They often do not have much time to think through the options they have. However, the criminal justice system dictates that evidence must be collected within 72 hours of the assault. LB 713 would allow victims to have evidence collected immediately with time to consider next steps like reporting to law enforcement. This allows the victims to be better able to make choices that are the most safe both physically and emotionally for them. While there are victims who want the involvement of law enforcement, the mandatory report that is currently in place can also serve as somewhat of a deterrent in seeking medical treatment to those who have already decided that making an official

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report is not the best option for them. There are many reasons a victim may not want to go to law enforcement. They may have been threatened further harm by the perpetrator if they report to the police. They may feel they will not be believed or fear that it could become public. In this day of television, Internet, and instant access to national and international events the victim blaming of women in high profile cases is not lost on the victims in our state. While the perpetrator may or may not be high profile, they still see the process play out, hear the comments made by those publicly and the judgments made by their family and friends. After being sexually assaulted, these comments and the blame they heard comes rushing back and will prevent many victims from seeking medical treatment to avoid any chance that their case may become public. However, there are also many victims who after reaching out for support, advocacy and counseling, make the decision to come forward and make an official statement to the police. I have worked with many clients who after hearing their options, having time to process and recognizing the available support, felt that reporting would assist in their long-term healing and would then begin to move forward. Victims can then get statements on the record and make an official report but the window to collect any forensic evidence has long since passed. These are the reasons our agency supports LB 713. We believe this process can work and that victims can seek long-term healing while also holding perpetrators accountable. Thank you for your time.

SENATOR BOURNE: Thank you. Questions for Ms. Schweer? Seeing none, thank you. Appreciate your testimony. Other testifiers in support?

BRIAN ELLIOTT: Thank you, Senator. My name is Dr. Brian Elliott. Elliott, E-l-l-i-o-t-t. I'm an emergency physician. I was a member of the task force committee. I was a cochairman of the medical portion of that committee. As a way of background, I was part of a group that formed the first successful conviction of a serial rapist here in Lincoln by a nurse...sexual assault nurse examiner providing the testimony, the evidence which is so crucial if we're going to get this crime prosecuted properly. By way of addressing Senator Chambers' comments, I stand in the breach a lot of times between the victim and legal or police. The

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victim is hurt beyond words emotionally more than physically. This is basically an emotional crime. There's very rarely any brutal injuries that I'm taking care of. But the emotional injuries are devastating. We deal with them in the emergency department for years to come so when they're faced with having to report and then all the ramifications, public, family they stall. When they, wisely in my opinion, choose to go to the victim assistance organizations, the Y, et cetera, those women generally advise the women, we can find you the help that you need. We can actually find you somebody that will not report and get you the help that you really do need to seek. So I would urge this committee to go forward with all the recommendations, even those that are listed as amendments to. I think that we need to move forward on all these issues. I have no further...or I'll address any questions.

SENATOR BOURNE: Thank you. Are there questions for Dr. Elliott? Senator Chambers.

SENATOR CHAMBERS: Doctor, what is a first-aid station? (laughter)

BRIAN ELLIOTT: You know, that is a good question. I sometimes think I'm running a first-aid station. It's nothing that I would use legally or explaining the work I do. I have no idea.

SENATOR CHAMBERS: So that could be discarded so that it wouldn't create the impression that somebody who might be dispensing band-aids or something could get involved in this process.

BRIAN ELLIOTT: Correct.

SENATOR CHAMBERS: Okay. Now, if the provisions that are proposed to be amended out were left in the bill and this evidence could be taken anonymously, would it be turned over to the police?

BRIAN ELLIOTT: Currently, that is a pilot program that's going on here in Lancaster County where they have an anonymous reporting program. They see that as a good solution. I think it's proactive on the part of the police because they understand the victim doesn't want to have a

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police officer even a female, even a compassionate female police officer interview them.

SENATOR CHAMBERS: How soon after the evidence is taken is it turned over to the police?

BRIAN ELLIOTT: Immediately. There is a chain of evidence that we in the emergency department start and it's taken very seriously because we understand it can be thrown out if it's not handled properly.

SENATOR CHAMBERS: So when you say immediately, is there a police person on the premises although not in the room where the evidence is being collected?

BRIAN ELLIOTT: How I generally do this is I don't let the victim know that yes, I've called the police. But I explain to the police officer that they're not going to want to talk to you. They're not going to want to hear that they don't even have to talk to you. They just want to get their issues taken care of from me. They understand that we have to take some evidence. They don't really know where this evidence is going but it's going to the police officer and the police officers generally, they realize that they're in an unusual situation too. And they usually talk to their watch commander to make sure that this is all appropriate and then they do a third-party report basically from me. They don't talk to the victim.

SENATOR CHAMBERS: And this evidence will be held up to three years.

BRIAN ELLIOTT: As I understand it.

SENATOR CHAMBERS: Have you ever experienced a situation where a false accusation was made against a man or a woman now because sometimes they'll charge a woman with sexual assault?

BRIAN ELLIOTT: Well, in my three court cases, no, I've never...I mean, the person on trial, the man on trial I'm sure feels that way but no I've never been part of that.

SENATOR CHAMBERS: Okay. But there have been cases of false accusation. They've been established and I'm going by what

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I've read in the paper and in some court cases. I wasn't there so I can only go by what I've read. If a person can report anonymously and this evidence is held for up to three years and then when is action taken by the prosecutor when the victim decides that it's okay to go ahead and move or just when?

BRIAN ELLIOTT: This is the stuff of TV, CSI. They basically get a hit on a DNA match because a lot of this can be processed for DNA. And if the DNA bank is big enough on people that are already convicted, already in prison and then they get a hit on that DNA then they know that they've got a match and they can proceed with the case. They go...

SENATOR CHAMBERS: Well, that proves they've got a match but it doesn't prove that the case was a rape. Suppose it's a situation where the people do know each other. They were dating each other and they have a falling-out and they have sex and the accusation is made that it was a rape. And it's reported anonymously. And they get back together. And then two years down the line there's a hit...

BRIAN ELLIOTT: Good police work...

SENATOR CHAMBERS: ...and then these people...well, I'm not interested in what they call good police work because I see what happens in Omaha. So I don't have the trust in the police that you do and I don't have confidence in these kind of procedures. And I don't think there's a person who is more upset when a woman is mistreated. It doesn't have to go to a sexual assault, than I am. But because these crimes are so emotion laden and they arouse such disgust and repugnance in the public, somebody has to be concerned about the one who's going to be accused. To me, an accusation is not the same as a conviction. And I know there have been cases of people falsely accused. And when we create a system where it's not necessary to do things or proceed expeditiously then a problem arises. Memories and other questions. So I'm going to narrow the question. If the victim knows the perpetrator and tells you the name of the perpetrator then what happens?

BRIAN ELLIOTT: It gets put in my medical report that the victim knew the perpetrator.

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SENATOR CHAMBERS: But you don't give the name of the perpetrator, the alleged perpetrator?

BRIAN ELLIOTT: They rarely tell me the name. They'll say boyfriend, the next-door neighbor.

SENATOR CHAMBERS: Do you tell that to the police? Would you tell that to them under this bill?

BRIAN ELLIOTT: Yes, I do.

SENATOR CHAMBERS: So then we don't need the discussion about the possible DNA hit. They can proceed based on the accusation against an identified person.

BRIAN ELLIOTT: Yes, they can.

SENATOR CHAMBERS: Okay, and then they have to make the case. The other concerns I have are not being addressed by this bill and not by anybody I've heard testify. And I don't want to make it seem that I'm questioning your integrity, your sincerity or anything else. But my view is different and my responsibility is different. I'm not treating people who come in alleging these terrible experiences but I am charged with the responsibility to make sure that laws to the extent that I can are fair and just because there are too many innocent people being convicted now. And that's where my concern arises, not sympathy for somebody who, in fact, does these things. But in these cases, I think, in most people's minds an accusation is the same as guilt. So that's the direction that I'm coming from. No disparagement from you or any impugning of your capability as a doctor.

BRIAN ELLIOTT: Thank you.

SENATOR BOURNE: Further questions? Seeing none, Dr. Elliott, thank you. Next testifier in support.

BRAD MEURRENS: (Exhibit 9) Good afternoon, Senator Bourne and members of the Judiciary Committee. For the record, my name is Brad Meurrens, M-e-u-r-r-e-n-s, and I'm the public policy specialist and registered lobbyist for Nebraska Advocacy Services Incorporated, the Center for Disability Rights, Law, and Advocacy. We are the designated protection

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and advocacy organization for the state of Nebraska. We are currently litigating a class action suit alleging systemic sexual assault of several women at one of Nebraska's regional centers. The current suit is the second sexual assault class action that we have brought against the regional center system. LB 713 contains several positive steps toward more effective prosecuting of sexual assaults and as such we fully support the enhanced reporting and privacy protections contained in LB 713. Reporting sexual assault occurrences is a key component to the efficacy of prosecuting sexual assaults. LB 713 would increase sexual assault reporting in two ways: first, through enhanced medical professional reporting requirements and second, through increased victim privacy. Prosecuting sexual crimes is hampered when incidents are not reported either by medical professionals or victims. LB 713's mandatory medical professional reporting would provide for increased numbers of red flags to be raised throughout the system, increasing incident awareness and enhancing the ability of prosecutors to find the locus of culpability. Second, victims are often reluctant to report or disclose a sexual assault because the information gathered requires personal identification. LB 713 would make personally identifiable information disclosure voluntary, which would provide cover for victims to report incidents of sexual assault without fear of retribution by their attackers. This cover is especially critical for vulnerable individuals as in our class action suits, as the sexual assaults were performed within institutions where victims were in continued jeopardy of contact with their attackers. This concludes my testimony this afternoon. I would be happy to answer any questions you may have.

SENATOR BOURNE: Thank you. Are there questions for Mr. Meurrens? Seeing none, thank you. Next testifier in support? First testifier in opposition. Are there any neutral testifiers? Senator Thompson to close.

SENATOR THOMPSON: (Exhibit 10) Just very quickly, this is a list of states that don't have a statute of limitations for various degrees of sexual assault. There are 21 states and the committee might want to consider limiting it, if you want, to first degree or aggravated or however you want the language. Some states it's just straight up, others are. I know this bill is complex and I think there are some things



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we could do this year that we could move forward and there are others that may need more work. And so I offer the amendment. First-aid station was the existing statute and we could go back and look at the legislative history but as far as I'm concerned, if you want, you know, I'd be happy to prepare an amendment and add that to it also. The balance, you know, the first four things I think from listening to the committee, Senator Chambers has issues with the revised evidence rule. I don't think I heard too much in terms of problem on the other three. The other one which is a balance issue, the second bullet, the one on the mandatory reporting, I did hear from all the advocates. The importance of how, and you heard it today, not requiring the healthcares to immediately report. The balance in that is the evidence, the police work that has to go for prosecution and the importance of protecting all of that part of the system, to be able to make sure that you can prosecute when you need to. So I tend to be on the advocate side of this thing but knowing that there were problems raised to me as a senator on that I held that off in the amendment but if that's the committee's wish, I certainly would be more than happy to move forward on that.

SENATOR BOURNE: Thank you. Are there questions for Senator Thompson? Seeing none, thank you.

SENATOR THOMPSON: Thank you.

SENATOR BOURNE: That will conclude the hearing on LB 713. Senator Synowiecki to open on LB 64. Can I have a showing of hands while the room clears of those here to testify in support of LB 64? I see one. Those in opposition? I see two in...okay, two opposition, one in support. Are there any neutral testifiers? I see none. Senator Synowiecki.

LB 64

SENATOR SYNOWIECKI: (Exhibit 11) Senator Bourne, members of the Judiciary Committee, good afternoon, I'm John Synowiecki. I represent District 7 in Omaha. Today I offer for your consideration LB 64, the Peace Officer Employee-Employer Relations Act. The purpose of LB 64 is to establish a minimum statewide standard of procedural due

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process for all Nebraska law enforcement personnel when they are placed under formal administrative investigation by their employer. LB 64 would require that administrative investigations and interrogations be conducted when the officer is on duty or during normal duty hours and be conducted at the employer's facilities unless urgent circumstances require otherwise. Under these investigations, the officer is to be given prior written notice of the employer's intent to record the interrogation, who will conduct the interrogation and the nature of the investigation. The officer is also to be given a copy of the written formal complaint 24 hours prior to the interrogation. The officer must be permitted to have representation present during the interrogation and must be notified that any statement given may be used by the employer as part of the formal investigation. In addition, LB 64 limits interrogations to 14 hours in a 24-hour period under normal conditions, outlines rules for administering polygraphs and provides for an officer submitting evidence and for addressing documents entered into the officer's personnel file. Nothing contained in LB 64 prevents an employer from investigating or making administrative rulings relative to an officer's conduct. By following the procedural standards established in LB 64, employers will be able to conduct effective investigations of complaints and enforce appropriate sanctions when necessary. Peace officers in large departments are currently protected by provisions provided in departmental employment contracts. LB 64 would provide similar protections to peace officers in smaller Nebraska communities by setting a statewide standard for all law enforcement agencies. Establishing a Peace Officer Bill of Rights is not a new concept. Twenty-three states, including Arkansas, Missouri, and Minnesota, have adopted some level of administrative due process rights and similar bills have been introduced in Congress with bipartisan support to establish a similar nationwide standard. I contend that the application of the standards outlined in LB 64 will provide statewide uniformity and stability in relations between peace officers and their employers and ultimately provide for more effective law enforcement in Nebraska. I want to thank you, Senator Bourne and members of the committee for giving LB 64 your full consideration. Thank you. (See also Exhibit 12)

SENATOR BOURNE: Thank you. Questions for Senator

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Synowiecki? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Senator Synowiecki, I can see the value in due process for an officer that maybe has a bad rapport with the public or something like that. If an officer is the subject of a criminal investigation whether it be false imprisonment or assault or some more serious crime, does this get in the place of police doing police work in criminal investigation work?

SENATOR SYNOWIECKI: This is for administrative investigations only. If a criminal investigation would be undertaken that would be in an entirely different arena than what the intent is behind LB 64.

SENATOR FLOOD: So it would be more for the officer and maybe has a bad rapport with the public or there's been complaints about it. Could it possibly be ever a situation where it's criminal in nature where they treat it administratively and...

SENATOR SYNOWIECKI: I suppose...

SENATOR FLOOD: ...somebody files an administrative complaint. They say Officer Flood kicked my door in. He didn't have a warrant and he shot my cat. Okay? That's obviously an administrative problem with the officer but it's probably...it's a criminal issue. Is there a way to separate that in the bill so that the criminal whether it's a police officer or a regular citizen like myself is treated the same way every other criminal is and a police officer receives due process on the administrative side?

SENATOR SYNOWIECKI: All I can, in response to your question, Senator Flood, all I could do is refer you to the bill. In any case, the act only applies to administrative actions and does not apply to criminal investigations of a peace officer except as provided in Section 8 of this act so it tries to differentiate between the two. The reason why I bring the bill, the reason why I've introduced this bill on more than one occasion is I think that police officers by the very nature of their work they take civil liberties away from our citizens. They arrest people.

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SENATOR FLOOD: Right.

SENATOR SYNOWIECKI: And given that job duty and responsibility within our society it kind of leaves them out there for unsubstantiated allegations of wrongdoing because of the very nature of their work and 23 states have recognized that because of the very nature of their work there needs to be some kind of baseline protections, due process protections, afforded them.

SENATOR FLOOD: And there are a lot of departments in the state that already have...

SENATOR SYNOWIECKI: Yes.

SENATOR FLOOD: ...procedures. I know Omaha does.

SENATOR SYNOWIECKI: Yes.

SENATOR FLOOD: Norfolk does. This would apply to the Elgin Police Department with two officers and...

SENATOR SYNOWIECKI: Yes.

SENATOR FLOOD: Okay. I see the value in it. I'm just concerned that...

SENATOR SYNOWIECKI: Yeah, sure.

SENATOR FLOOD: ...you could see both sides depending on how you viewed a certain situation. Thank you.

SENATOR SYNOWIECKI: Absolutely. Thank you.

SENATOR BOURNE: Further questions for Senator Synowiecki? Senator Chambers.

SENATOR CHAMBERS: Senator Synowiecki, this is going to be a gentle afternoon for you as far as I'm concerned unless we get on the floor but that won't be this afternoon (laughter). Would you turn to page 6, if you have a copy of the bill before you?

SENATOR SYNOWIECKI: Yes.

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SENATOR CHAMBERS: Beginning in line 22, the peace officer shall be afforded all the protections set forth in the United States Constitution and the Constitution of Nebraska. So that would include the protection of the right to vote, the protection of the right to run for Congress if you meet those requirements, and every other protection of any nature based on this language. But obvious...well, wait a minute, don't let me say obviously. This is a police bill. What does that mean? What is the limitation on that, if any?

SENATOR SYNOWIECKI: The limitation, Senator? I don't know exactly what you're asking.

SENATOR CHAMBERS: Okay. The peace officer shall be afforded all the protections set forth in the United States Constitution and the Constitution of Nebraska. What relevance does that have to this bill?

SENATOR SYNOWIECKI: Just attempts to reiterate that they are afforded all protections under the law because it's a bill that is relative to due process procedures for administrative sanctions, attempts to reiterate in statute that they're afforded all the rights to them afforded under the Constitution.

SENATOR CHAMBERS: But this doesn't say anything about due process rights, does it?

SENATOR SYNOWIECKI: The bill...

SENATOR CHAMBERS: So you're talking about more than due process when you talk about these constitutional rights that are implicated here.

SENATOR SYNOWIECKI: Um-hum.

SENATOR CHAMBERS: Are you talking about constitutional rights that relate to something other than due process in this language?

SENATOR SYNOWIECKI: It states that they shall be afforded all the protections set forth in the United States Constitution and the Constitution of Nebraska.

SENATOR CHAMBERS: Suppose that was stricken. How would it

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hurt the bill?

SENATOR SYNOWIECKI: I don't think it would hurt it at all.

SENATOR CHAMBERS: Okay. Is this copy from some other state?

SENATOR SYNOWIECKI: There is model legislation. One thing I can tell you, Senator Chambers, that this version of the Nebraska Police Officer Bill of Rights is a much, much watered down version than the first year I was down here which was three years ago. A lot of the provisions have been taken out because they attracted a certain level of controversy.

SENATOR CHAMBERS: So it has been changed now from an atrocity to a mere abomination (laugh)? Would you turn to page 4, Senator Synowiecki? And see, we're both having a good time right now (laugh).

SENATOR SYNOWIECKI: Yeah.

SENATOR CHAMBERS: Okay, starting in line 19, a reasonable attempt shall be made to notify the peace officer's commanding officer of the pending interrogation. Who besides the commanding officer would order an interrogation? Wouldn't the commanding officer already know this?

SENATOR SYNOWIECKI: Well, I think what they're speaking of is their direct, like it would be the sergeant in the field to let them know of an impending administrative investigation by the administration.

SENATOR CHAMBERS: What does the sergeant have to do with any of this? Would a general have to get permission from a sergeant to talk to a private?

SENATOR SYNOWIECKI: No (laugh), not necessarily.

SENATOR CHAMBERS: So what sense does that make? And I'm asking it as a question seeking information.

SENATOR SYNOWIECKI: Perhaps Steve Grabowski can shed some light on that for you. Quite frankly, I...

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SENATOR CHAMBERS: The buck doesn't stop with you, does it?

SENATOR SYNOWIECKI: No, it doesn't.

SENATOR CHAMBERS: Okay. I got one or two others that I want to...and these are for information. If you go to line 5 on page 4, if an employer chooses to record the interrogation of the peace officer or any party affiliated with the investigation, the employer shall notify the peace officer in writing. And if the peace officer is not notified in writing, then what? It doesn't say there can be no interrogation. It doesn't say there's any penalty.

SENATOR SYNOWIECKI: Well, to record the interrogation which I am interpreting to be like a tape recording of the procedure...

SENATOR CHAMBERS: Okay, so...

SENATOR SYNOWIECKI: ...if they're not notified in writing then they would be prohibited from doing it.

SENATOR CHAMBERS: Let me see. Prior to commencement of any interrogation session if an employer chooses to record the interrogation of the peace officer the employer shall notify the peace officer in writing. Suppose there is no notification and the employer says, you're going to be interrogated. If you refuse you're insubordinate.

SENATOR SYNOWIECKI: Well, the statutory provisions within the bill would give the employee or the person being investigated an opportunity of notice that it is going to be recorded interrogation. If they fail to notify them then it would be prohibitive activity. That is the recording of the interrogation.

SENATOR CHAMBERS: What is wrong with it being recorded whether the one being interrogated knows it's to be recorded or not if only the truth is going to be told?

SENATOR SYNOWIECKI: It simply indicates that they need to notify the peace officer in writing that the interrogation will be recorded.

SENATOR CHAMBERS: Why do they have to make the notification

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in writing?

SENATOR SYNOWIECKI: That's the outline within the bill.

SENATOR CHAMBERS: All right. So the cop walks in and I hand him a piece of paper that says this is going to be recorded. Then it can be recorded, right?

SENATOR SYNOWIECKI: Yes,...

SENATOR CHAMBERS: Okay, so the...

SENATOR SYNOWIECKI: ...I think the original version of the bill disallowed recording altogether so this is, again, when I speak to the watered down version of this bill, the...

SENATOR CHAMBERS: ...so what is the purpose of the notification if I can give it when he walks into the room?

SENATOR SYNOWIECKI: It very well could be. Prior to the commencement of any interrogation.

SENATOR CHAMBERS: Right. So he walks into the room. You're the officer and I say, Officer Synowiecki, this is to notify you that this is going to be recorded. Now, sit down and we're going to interrogate you.

SENATOR SYNOWIECKI: Um-hum.

SENATOR CHAMBERS: That complies with the statute, doesn't it?

SENATOR SYNOWIECKI: It does.

SENATOR CHAMBERS: So what is the purpose of the notification?

SENATOR SYNOWIECKI: To notify the peace officer in writing that it is going to be recorded.

SENATOR CHAMBERS: Why? If you can do it as soon as he walks in the room, what's the significance of the notice?

SENATOR SYNOWIECKI: It's part of the due process provisions associated with the bill and it's...like I said, it's kind



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of modeled after other states and what they have done relative to this issue.

SENATOR CHAMBERS: Obviously, those states didn't have somebody like Senator Chambers in their Legislature. Now, if we come to a set of circumstances where we read again and again about the chief administrator of the peace officer's employer and I'll give you an example. On page 4 we will stay in lines 13 and 14. The chief administrator of the peace officer's employer, who is the peace officer's employer?

SENATOR SYNOWIECKI: It would be the head of the department.

SENATOR CHAMBERS: So the department is the employer of the peace officer. Correct?

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: It's not the city or the political subdivision. The employer is the department. Is that true?

SENATOR SYNOWIECKI: Should be disclosed as the peace officer's...unless the chief administrator of the peace officer's employer determines that the identification of the complaint should not be disclosed.

SENATOR CHAMBERS: But let's take it a step at a time first. Who is the employer of the peace officer?

SENATOR SYNOWIECKI: The department, the police department would be the chief administrator of the department.

SENATOR CHAMBERS: So that means the chief of police or the sheriff.

SENATOR SYNOWIECKI: The chief of police or the sheriff. Or perhaps in a one-person department could be the head of the executive branch of government within that city which would be the mayor or chief executive officer.

SENATOR CHAMBERS: But if the department is the one that hires it can't be both. Oh, you mean there's only one cop, period.

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SENATOR SYNOWIECKI: Yeah, if it's a one police officer, for example, in Ewing, Nebraska, I know they...

SENATOR CHAMBERS: And you got to go through all this where you got one cop.

SENATOR SYNOWIECKI: Um-hum. Senator, that's...some of the intent and the purpose behind the bill is for these very, very small departments and their extremely quick turnover in these departments. Many individuals in the field, they'll go to other departments that have these type of procedural rights because of that very reason. There is no rights afforded them procedurally speaking.

SENATOR CHAMBERS: Okay. Now if you'll go to page 3 with me then I'll be through with you.

SENATOR SYNOWIECKI: Sure.

SENATOR CHAMBERS: Starting in line 25, any interrogation of the peace officer shall be conducted when the peace officer is on duty or during his or her normal duty hours. What's the difference between normal duty hours and being on duty? Can you be on duty other than during normal duty hours?

SENATOR SYNOWIECKI: Not if you're in to work an overtime type of situation, Senator. Perhaps there would be an instance where normal duty hours and being on duty are two different things. If they're running a special operation or something.

SENATOR CHAMBERS: Then that person could not be interrogated if he or she is working overtime.

SENATOR SYNOWIECKI: No, they could because there's an or there. Is on duty or during his or her normal duty hours. For example, the police department in Omaha, though Omaha would not pertain to this, they run prostitution stings and some of them officers are on overtime in the evening and that would be...I'm just trying to offer an example.

SENATOR CHAMBERS: Okay, so they're on duty but not during normal duty hours.

SENATOR SYNOWIECKI: Yes.

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SENATOR CHAMBERS: Okay.

SENATOR SYNOWIECKI: Yes.

SENATOR CHAMBERS: That's all I'll ask you. Thank you, Senator Synowiecki.

SENATOR BOURNE: Further questions? Senator Flood.

SENATOR FLOOD: Real briefly, thank you, Chairman Bourne. I don't trust polygraphs and there's polygraph in Section 5 of this bill. But in light of what Senator Chambers raised, on page 6, lines 22 through 24, do you afford police officers their constitutional rights, they have the Fifth Amendment right against self incrimination. I would assume that's criminal self incrimination. If they invoke that right, that would negate Section 5 dealing with being forced to sit down and take a polygraph. Wouldn't that seem a logical extension of that? I mean.

SENATOR SYNOWIECKI: Well, that's the self incrimination. You're an attorney, I'm not. I think that's in the criminal arena...

SENATOR FLOOD: Right.

SENATOR SYNOWIECKI: ...if they don't abide by an interrogation request for an administrative hearing, you know, could they be fired? Perhaps they could be for not participating in and involving themselves in an administrative investigation.

SENATOR FLOOD: I guess my concern still comes down to the...and I think the bill is written in a way that recognizes this is kind of a hybrid investigation because if there's allegations against an officer there probably very well could be something that's illegal against our criminal code. How many of these investigations are noncriminal that you're aware of? I mean, what types of things would this bill cover specifically? What kinds of complaints?

SENATOR SYNOWIECKI: For example, an officer is alleged to have not conducted themselves in a professional way during the course of a speeding ticket. You know, it's alleged

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that abusive language was used or something, something like that is the best...

SENATOR FLOOD: Is there any way...

SENATOR SYNOWIECKI: ...example I can come up with off the cuff.

SENATOR FLOOD: ...what would you think of an amendment on the bill that just said if any of the conduct is considered criminal then a criminal investigation will precede any sort of administrative review?

SENATOR SYNOWIECKI: That is my intent. That's what is trying to get at with that section of the bill that I read to you. That is my intent...

SENATOR FLOOD: Yeah.

SENATOR SYNOWIECKI: ...as you said it.

SENATOR FLOOD: We had an earlier situation this year where state deputy sheriff at the penitentiary would talk to people on an administrative level and then come around the next day with a felony charge. And that's why I get concerned about what kind of protections these folks have. Are they being treated as criminals? They're being treated as... thank you. I appreciate that.

SENATOR BOURNE: Further questions?

SENATOR CHAMBERS: I do have one.

SENATOR BOURNE: Senator Chambers.

SENATOR CHAMBERS: Thank you. Senator Synowiecki, looking at the definition of formal investigation starting at the bottom of page 2 in line 26, formal investigation means the process of investigation ordered by a commanding officer during which the questioning of an officer is intended to gather evidence of misconduct which may be the basis for filing charges, seeking his or her removal, discharge, or suspension in excess of three days. If they're seeking to suspend this person for three days none of this that we find in Section 4 applies, does it, because Section 4 deals with

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a formal investigation? And if it's a suspension of three days or fewer then that is not a formal investigation.

SENATOR SYNOWIECKI: Yes, you're correct. The criteria or the threshold is in excess of three days. That's correct.

SENATOR CHAMBERS: Okay. I just wanted to be sure that's understood. Thank you.

SENATOR SYNOWIECKI: Um-hum.

SENATOR CHAMBERS: That is all I have now.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR SYNOWIECKI: Thank you, Senator.

SENATOR BOURNE: First testifier in support?

STEVE GRABOWSKI: (Exhibit 13) Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Steve Grabowski and I'm the president of the Nebraska Fraternal Order of Police. The Nebraska Fraternal Order of Police represents over 2,500 police officers, deputy sheriffs, corrections officers and probation officers from Sidney, Nebraska to Dakota City and from Omaha to Scottsbluff. The Nebraska FOP also represents Nebraska's peace officers from the rank of deputy or police officer to captain. Members of the Nebraska FOP also include chiefs of police and sheriffs. I am a lieutenant with the Sarpy County Sheriffs Department and I've been in law enforcement for over 30 years. I'm here today to speak in favor of LB 64, Peace Officer Employer-Employee Relations Act. Senators, I have sent you a letter explaining what LB 64 is about and why LB 64 will benefit both Nebraska's peace officers and law enforcement administrators. Please take time to read this letter. If you have any questions, please feel free to call me. Senators, I have given you a letter from LaVista Chief of Police Bob Lausten, stating his support for the Peace Officer Employer-Employee Relations Act. Chief Lausten says provisions like LB 64 do not hinder the operation of the LaVista Police Department. In fact, he says, when an officer is involved in a formal administrative investigation they are more concerned about the fairness of the process than the ultimate outcome. LB 64 makes sure

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everyone knows the rules and even more important is the fact that everyone plays by those rules. I am also giving you an e-mail that I received from a Nebraska sheriff. In the second paragraph of this e-mail the sheriff says, "It is time for Nebraska to look to the future in law enforcement. We need to ensure officers are protected when they do their job. The days of firing an officer because he looked at you wrong or arrested the wrong person need to end. I see and hear about it from other sheriffs and shake my head in disbelief." Opponents of LB 64 would have you believe there already exists an avenue of appeal in the form of a civil service or a merit commission of some sort. The County Merit Commission and the Civil Service Commission is just that, an avenue of appeal not an avenue to conduct an administrative investigation. The investigation is conducted and then a decision is made to discipline the police officer. Then and only then does the commission's authority go into effect. Senators, I am a law enforcement administrator. I oversee the actions of over 55 deputies and 20 civilians on a daily basis. Administrative investigations and the guidelines that I use in those investigations mirror LB 64. I have no problems with any of these investigations nor do I feel these investigations tie my hands in any manner. By following simple procedural standards in LB 64 and mirrored in many current law enforcement contracts in Nebraska, employers will be able to conduct effective investigations of complaints and force appropriate sanctions when necessary and afford the official affected a reasonable standard of procedural due process. Remember, Nebraska's peace officers put their lives on the line for all of Nebraska's citizens and they don't pick who to serve or when to protect. It's simply to protect and serve. I'll answer any questions if you have any, Senator.

SENATOR BOURNE: Thank you. Are there questions for Mr. Grabowski? Senator Chambers.

SENATOR CHAMBERS: Lieutenant Grabowski, in my community they do pick and choose whom they're going to protect and serve and whom they are going to abuse. Just to give a concrete example, the cops kicked in the door at the wrong house of an elderly black woman, bedridden, and her...the others in the house were elderly people too. They said they had had the house under surveillance. That means they should have known the house they were going to. Tore up the

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house, found no drugs naturally and no apology was given, nothing. That's just the way it goes in Omaha. It happened to be a black woman if I didn't make it clear, an old black woman. So I don't accept this stuff about protecting and serving applying across the board to all the police agencies in the state. Would you turn to page 2? Beginning in line 17, the act does not apply to a police or sheriffs department that has adopted any procedure that at a minimum provides the peace officer the same rights and protections as provided under the act with regard to such procedure. If there is a police agency with a collective bargaining unit and they cannot bargain with the city or the political subdivision to get all of these rights then this bill trumps their collective bargaining agreement, doesn't it?

STEVE GRABOWSKI: Yes, sir.

SENATOR CHAMBERS: So what's the use of bargaining when you've got a statute that gives you everything? There's no need to bargain anymore, is there?

STEVE GRABOWSKI: I don't believe this statutes gives everything. There are some entities that have a lot more procedural due process avenues than what this bill provides. There's a lot more...

SENATOR CHAMBERS: But I wanted to be clear that even if there's a collective bargaining agreement, if it has anything less than what's in this bill this bill then fills in the gaps and...

STEVE GRABOWSKI: Yes, yes.

SENATOR CHAMBERS: Okay. Now, there's one other question I want to ask you. There is someplace in the bill that says there can only be two people interrogating...no more than two people interrogating at a time. Are you familiar with that?

STEVE GRABOWSKI: Yes, I am, Senator.

SENATOR CHAMBERS: Why is that?

STEVE GRABOWSKI: It's my interpretation that the person that's being interrogated or investigated would be

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overwhelmed by five or six different people in there too, and I think the browbeating that would happen would be unjust for the officer.

SENATOR CHAMBERS: I know of cases where juveniles have been interrogated by more than two people. Would that shock you that that has happened?

STEVE GRABOWSKI: No, it wouldn't.

SENATOR CHAMBERS: And you mean these seasoned police officers are more delicate than the juvenile?

STEVE GRABOWSKI: No, sir, I'm not saying they're more delicate at all.

SENATOR CHAMBERS: Okay. So these cops are being asked to be given more in the way of protections than a person who is being investigated than is being interrogated pursuant to that investigation.

STEVE GRABOWSKI: If that's the way you want to interpret it, yes, it is, Senator.

SENATOR CHAMBERS: Why is it necessary to give the name and the rank of the person who's going to do the interrogating?

STEVE GRABOWSKI: At times, it's also an intimidation factor or less of an intimidation factor that if a captain interviews a lieutenant there may be some intimidation factor. I particularly...the name and the rank doesn't necessarily mean much to me. OSI, for example, has it to where they have...and that's the Office of Special Investigation for the Air Force. They don't notify rank. I'm not particularly...well, that doesn't bother me not to have that in there. But, again, it makes the officer feel probably intimidated somewhat if a captain would be taking to a deputy or a police officer, more intimidation factor.

SENATOR CHAMBERS: Why should I be worried about a cop being intimidated when being interrogated by anybody in the department?

STEVE GRABOWSKI: Shouldn't be.



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SENATOR CHAMBERS: So that could be stricken without any problem?

STEVE GRABOWSKI: I would see that it could.

SENATOR CHAMBERS: And you don't really see a necessity to say there shall not be more than two interrogators at any given time, do you? Or do you?

STEVE GRABOWSKI: I just see the intimidation factor. I see that. I don't think that's proper in any form of interrogation.

SENATOR CHAMBERS: Does the cop think they'll beat him?

STEVE GRABOWSKI: I don't know what a cop thinks. I've never been involved in one of those from the investigative end.

SENATOR CHAMBERS: So what would intimidate them? What are they afraid of? Because to be intimidated means if somebody has made you timid or frightened...

STEVE GRABOWSKI: Of losing something that's of value to you.

SENATOR CHAMBERS: ...and you...but he's not worried about physical abuse.

STEVE GRABOWSKI: I would say physical abuse probably isn't the worry, no.

SENATOR CHAMBERS: I don't see anything in here which says during this 14 hours which means combined with the work shift and the interrogation, that the person has to be allowed to get a drink of water or go to the bathroom. Where is that provided for in the bill?

STEVE GRABOWSKI: I don't believe it is.

SENATOR CHAMBERS: And that wouldn't necessarily be a minor trivial matter, would it?

STEVE GRABOWSKI: No, it wouldn't.

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SENATOR CHAMBERS: That's all that I will ask but you know where I stand on this bill.

STEVE GRABOWSKI: Yes, I do, Senator.

SENATOR CHAMBERS: I stand right on top of it (laugh).

STEVE GRABOWSKI: Exactly.

SENATOR CHAMBERS: Okay but...

STEVE GRABOWSKI: Where you've stood since we've introduced it.

SENATOR CHAMBERS: (laugh) Okay. I just wanted to ask those questions and get your response on the record. Thank you.

STEVE GRABOWSKI: Senator, if I could make a quick comment on the duty hour part of that?

SENATOR CHAMBERS: Sure, I'd appreciate that.

STEVE GRABOWSKI: The reason we looked at duty hours was is that police officers work odd hours and even though I may not be even working but it is my duty hours. I may be up at 3 o'clock in the morning as a normal course of events as opposed to calling me at say, 8 or 9 o'clock in the morning to where that's my normal sleeping hours would be that time. So my normal time to have me investigated would be the time to where I would work. Say I worked the midnight to 8 shift, my normal working time would be midnight to 8. So to talk to me, we would like to see that done in the evening and some people have already brought it to the attention that it may cost a little overtime to do that but it'd either cost overtime to have the investigator come out at that time or it'll cost overtime to have the person come in on their nonworking time and to pay them to come in for that too. So that's what we meant with nonduty hours.

SENATOR CHAMBERS: And it is clear to me now why the two terms are used. Okay.

STEVE GRABOWSKI: Thank you.

SENATOR BOURNE: Further questions? Mr. Grabowski, or

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excuse me, is it lieutenant?

STEVE GRABOWSKI: Yes, it is.

SENATOR BOURNE: I'm sorry. Earlier I had said Mr. Grabowski. I apologize. Lieutenant Grabowski, you represent 2,900 individuals.

STEVE GRABOWSKI: Twenty-five.

SENATOR BOURNE: Twenty-five hundred. How often is an officer...and you don't have to give me numbers. How often is an officer subject to some sort of an administrative investigation? Just to get a sense of the problem.

STEVE GRABOWSKI: Oh, and I would be going on an average at Sarpy County, maybe, oh gosh, three times a year would really be...I mean an administrative investigation on one particular person? Three times a year would really be an extreme. I mean, I very seldom see any...

SENATOR BOURNE: So three officers a year in your area...

STEVE GRABOWSKI: ...well, yeah. Well, three times per officer and then while administrative investigations that we did last year at Sarpy County and we have 130 deputies. We did 18 administrative investigations that would fall under these guidelines. We did 18.

SENATOR BOURNE: Can you give us a sense of some of the allegations of those 18? What were you investigating or what were (inaudible)...

STEVE GRABOWSKI: Like Senator Synowiecki alluded to earlier, improper conduct on a traffic stop, someone was rude to me in a traffic stop. Other investigations would include an accident that the deputy may have in the car. I mean, there's an accident that he's caused or maybe it is purely an accident or some other damage is caused to county property. Those are also causes for administrative investigations. So...

SENATOR BOURNE: Any time that an officer has an interaction with a citizen and that citizen complains to the department, that would result in an administrative investigation?

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STEVE GRABOWSKI: It does in Sarpy County Sheriffs Department, yes.

SENATOR BOURNE: Let me get a sense. Oftentimes when we deal with police matters and the Judiciary Committee anyway, there's kind of a breakdown between...maybe this isn't the right word, but there's a breakdown or a distinguishing between the brass and the rank and file.

STEVE GRABOWSKI: Yes, sir.

SENATOR BOURNE: Now you're a lieutenant. When do you or when does an officer cease being kind of the rank and file which I see this applying to, this bill, versus the brass or the administration? Where does that...

STEVE GRABOWSKI: Well, again, this bill would affect everyone from a deputy to a chief. It doesn't say if you're a chief of police it doesn't affect you. If a chief of police is being administratively investigated, they recently had one in Broken Bow, Nebraska. Had this been in effect, these guidelines would have had to have been followed. It doesn't say just because you're a chief or a lieutenant or a captain or whatever, you don't have these guidelines. Everyone will fall under these guidelines and, again, the hard part to determine is is that and as I as a lieutenant when I do these and I follow these guidelines that are similar to what's in LB 64. I just find them as a checklist more than anything else. I make sure that all these things are completed and then I know that I've completed at least our part of the due process. I guess this protects everyone and it doesn't exclude anyone as far as police officer in Nebraska.

SENATOR BOURNE: Okay, just so I can understand how this works. I've never been in the military so I'm not sure of the ranks. But a sergeant would do an administrative investigation on a patrolman.

STEVE GRABOWSKI: If he was assigned to, yes.

SENATOR BOURNE: Okay, a lieutenant would do one on...is captain below the lieutenant?

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STEVE GRABOWSKI: No, a lieutenant would do one, could do one on a sergeant or the deputies or more, in fact, in our department a lieutenant can also do one on a captain.

SENATOR BOURNE: Oh, so not necessarily the higher rank...

STEVE GRABOWSKI: No, it's not necessarily rank prohibitive, no, sir.

SENATOR BOURNE: Okay. Further questions? Seeing none, thank you.

STEVE GRABOWSKI: I have that other e-mail. Could you pass that out for me? Okay.

SENATOR BOURNE: We'll pass that around. Thank you. (See also Exhibit 14, 15, 16)

STEVE GRABOWSKI: Thank you.

SENATOR BOURNE: Are there other testifiers in support? First testifier in opposition?

TERRY WAGNER: Good afternoon, Senator Bourne, members of the Judiciary Committee, my name is Terry Wagner, W-a-g-n-e-r. I am here today representing the Nebraska Sheriffs Office and the Nebraska Sheriffs Association in opposition to LB 64. I feel a little hypocritical. Lieutenant Grabowski and I are...I would consider us friends and I am also a member of FOP even though I'm the sheriff of Lancaster County so from that perspective I respect Steve's position but respectfully the sheriffs recognize that there is a need to conduct fair investigations when warranted on our employees. The vast majority of sheriffs' offices are at will agencies. There are only ten sheriffs' offices in the state that are Merit Commission departments. That would be any county over 25,000 population. The remainder of those counties would be at will and this bill would specifically prohibit at will employment status. The ten counties that are Merit Commission counties already have provisions in the Merit Commission rules and regulations that prescribe the manner and procedure of a number of employment issues, one of which is disciplinary action. Those procedures are agreed upon by the commission, the deputies, and the sheriff. Every county in the state is not

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the same. The Merit Commission rules and regulations are a good example of that because they only apply to counties of over 25,000. One approach is not necessarily good for all law enforcement agencies in Nebraska. Sheriffs and their deputies should be the ones that decide what works best for their agency. The provisions of LB 64 should be part of negotiating process between a sheriff and his or her deputies. This bill would place financial hardships on some counties. It would take away the ability of the sheriff to negotiate working conditions with their deputies and others and for counties that have at will employment this bill would create a huge burden for that agency. For these reasons, the Nebraska Sheriffs Association would oppose LB 64 and I would be glad to answer any questions the committee might have.

SENATOR BOURNE: Thank you. Are there questions for Sheriff Wagner? Senator Chambers.

SENATOR CHAMBERS: Sheriff, you didn't write this bill but I didn't get to ask this to any of the other people so I'm going to read this for you and then get your thought. For those who may have a copy of the green bill on page 5 starting in line 27. No document containing comments adverse to a peace officer shall be entered into his or her personnel file unless the peace officer has read and signed the document. When a peace officer refuses to sign a document containing such adverse comments the document may be entered into the peace officer's personnel file if the peace officer's refusal to sign the document is noted on the document by the chief administrator of the peace officer's employer and the notation is witnessed by a third party. Now here's the question I would ask. If there is no signature on the document, would that be evidence that the officer did not sign it?

TERRY WAGNER: Yes, sir (laugh).

SENATOR CHAMBERS: So why then would the peace officer...when then would the chief administrator have to note that the officer did not sign it and have a third party witness it when if you look at the document you see no signature? Because you're a sheriff and you all know how to figure these things out.

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TERRY WAGNER: You know, I think this provision was put in because I do remember years ago and I've been in, you know, the sheriffs office for 29 years this year and I do remember going to my personnel file and there being items in there that I thought, where did these come from and why were they put in there? And it would be nice if I knew that they were going in there. And I think the purpose of this provision, although I don't necessarily support the bill, is to make sure that the employees know what's going in their personnel file.

SENATOR CHAMBERS: So then the chief or the sheriff would make a notation that the officer refused to sign the document.

TERRY WAGNER: That would read that way, yes.

SENATOR CHAMBERS: Okay. Thank you. Oh, this question. Why would it be witnessed by a third party? If the chief and the sheriff makes a notation that the officer refused, why would it have to be witnessed by a third party?

TERRY WAGNER: I don't know, Senator.

SENATOR CHAMBERS: Okay.

SENATOR BOURNE: Further questions? Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Sheriff Wagner, do you...it's sort of a philosophical question. Do you see this as a...a bill like this, would it be your observation that it's kind of a labor management battle? I mean you brought up at will employment. You brought up...I mean do you...you're a member of the FOP. Obviously, it causes you a little bit of, I guess, consternation to even be here in this capacity. But I see it as a labor management fight right now or at least you brought that to the table. I mean, is that observation way off?

TERRY WAGNER: No, sir, that is my opinion that these issues and, as a matter of fact, our agency adheres to about 95 percent of the provisions of this bill but I think it's something that should be negotiated between employees and their employer and not something in statute. Sheriffs offices are protected...some sheriffs offices are protected

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by the Merit Commission as I stated but they only apply to counties of 25,000 people or more. I think that this bill for a small agency would be difficult to implement.

SENATOR FRIEND: Then Senator Chambers brought up earlier in his line of questioning the whole theory of collective bargaining agreements around the state. I'm willing to bet that there aren't too many proprietarily placed...I mean, the FOP is the bargaining unit for the rest of the state short of Lincoln and Omaha. I mean, is that a fair statement?

TERRY WAGNER: I think you're right. I think there may...(inaudible) IBPO, International Brotherhood of Police Officers, there used to be some but I'm not sure if there are anymore.

SENATOR FRIEND: Okay.

TERRY WAGNER: But yeah, you're right. FOP is a prominent bargaining unit for the agencies across the state.

SENATOR FRIEND: Thanks.

SENATOR BOURNE: Further questions? Seeing none, thank you.

TERRY WAGNER: Thank you.

SENATOR BOURNE: Appreciate your testimony. Next testifier in opposition?

RICK BOUCHER: Members of the committee, my name is Rick Boucher, B-o-u-c-h-e-r. I'm here on behalf of the Nebraska Sheriffs Association in opposition to LB 64. The Sheriffs Association opposes LB 64 really in two senses. One, many aspects are too definite and in others they're simply vague and ambiguous. Let me tell you about the two definite, though. First of all, the due process...procedural due process in Nebraska in state and federal courts does not require 24 hours' notice. There's the most recent case, Barnette v. City of Scottsbluff which was 2004. Really what the Nebraska Supreme Court said is, federal constitutional requirements and state are alike. All the procedural due process requires notice, identification of the accuser, factual basis for the accusation, reasonable time and



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opportunity to present evidence concerning the accusation and a hearing before an impartial decision-maker. This bill imposes requirements under the guise of due process. For instance, that you would receive notice of the charge within 24 hours. So that requirement is not required by the due process clause. I believe that if you look at page 2 you'll see that the act applies, for instance, line 14. This act applies to administrative actions. If you'll look down at line 23 you'll see that administrative proceedings not only include when you go to see the sheriff but this one applies in all the full panoply of rights applies when you go to see a lieutenant who may recommend to the sheriff that, in fact, that they be disciplined or not disciplined so if you'll look at lines 23 through 25, it starts long before the disciplinary process. Also you'll note that the...on page 3, line 16, peace officer is very expansive that it includes the traditional officers but you would also, I think, need to determine whether fire marshals, Games and Parks officers, liquor control officers, anyone with the power of arrest may well be impacted by this. I point to page 4 also. Again, a concern of the sheriffs where it says the peace officer...this is on line 26 of page 4, the peace officer shall be permitted to have representation present during the interrogation. Not a due process requirement. Some sheriffs believe that that representation would again be a cost against the county. It doesn't say that the officer will pay for it on his or her own. It just indicates that you have a right to have counsel be it a lawyer or other representative there. I would also indicate to you also that the same opportunity to present evidence which is a due process requirement appears on page 6 but, again, whether it's documents, witnesses, or other evidence it doesn't indicate who is to provide that or whether the county would be picking that cost up. In that sense, it is too definite to the extent that it imposes far more requirements than is required under both state and federal constitution. It is indefinite in the sense that it includes phrases such as the...

SENATOR BOURNE: Mr. Boucher,...

RICK BOUCHER: ...yes.

SENATOR BOURNE: I'm sorry, your light...the time has expired, if you'd like to conclude.

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RICK BOUCHER: Okay. That's all.

SENATOR BOURNE: Thank you. Are there questions? Mr. Boucher, you...the previous testifier as a sheriff indicated that it's too cumbersome administratively and belongs more properly in the collective bargaining agreement. You seem to be testifying that it's simply a content issue. Can we resolve these issues that you've discussed to make...or could the proponents of the bill resolve those issues to make the bill acceptable to the Sheriffs Association?

RICK BOUCHER: Senator, for each I would certainly need to send those to the Sheriffs Association. Some of those, as I said, whether it's the cost issue or whether it's the expansive 24...I would simply...those are the issues that they asked to bring up. And Mr. Wagner was testifying on behalf of the Sheriffs Association also. These, I think, are substantive and they may well be resolved in visiting with Steve or the Fraternal Order of Police.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

RICK BOUCHER: Thank you.

SENATOR BOURNE: Other testifiers in opposition? I assume you've signed in?

MARY SOMMERMEYER: (Exhibit 17) Yes. Senator Bourne and members of the committee, I'm Mary Sommermeyer. That's M-a-r-y S-o-m-m-e-r-m-e-y-e-r. I'm a registered lobbyist for the League of Nebraska Municipalities and I'm here in opposition to LB 64. Our opposition does not mean that the league is opposed to treating employees fairly when there's a need for an investigation. Our concerns relate to the impact of the bill's provisions primarily on smaller communities. Currently, there are requirements in the statutes for differing classes of cities and villages. These provisions differ based on the size of the municipality. And I've got copies of the statutes that I'm talking about in the handout. Cities of the second class and villages have statutes that allow an officer who has been disciplined or removed by the mayor or chairperson to

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appeal the action to the city council or village board. And those statutes also require the governing body to adopt procedures to govern the discipline and removal of police officers. There's also the Civil Service Act that applies to cities of the first class with full-time police officers and that act can be adopted by cities of the second class and villages. There are sections that allow again for the discipline and removal of an officer only for specified reasons. And one section requires the municipality to adopt procedures for acting on an accusation against an officer or for taking any action such as suspension, demotion, and so on. Under those statutes municipalities can choose to adopt the type of requirements found in this bill and we feel it should be up to each municipality to do that. If the committee chooses to advance LB 64, the league asks that you consider coordinating the bill's provisions with other requirements in statutes. We have concern about specific language in the bill. For example, the reference to chief administrator. If you take a village, who is the chief administrator? Is it the village chairperson who's one of the five elected trustees who's chosen to serve usually for a year or two at a time? Is it the village clerk who is usually a part-time employee or often can be? There's a provision about notifying the commanding officer and we have questions over who that might be, particularly like a village that has just one village marshal. In the handout, I did try to rough out some amendments so that if you did choose to advance this bill some amendments to try to address these concerns because we've raised these in prior bills and so I thought well, maybe this time I'd try to take a stab at some language. It only addresses municipalities. I didn't try to address counties or any of the others. But I offer that.

SENATOR BOURNE: We appreciate your effort. Are there questions for Ms. Sommermeyer? Seeing none, thank you.

MARY SOMMERMEYER: Thank you.

SENATOR BOURNE: Other testifiers in opposition? Are there testifiers neutral? Senator Synowiecki to close. Closing is waived. That will conclude the hearing on LB 64. Senator Synowiecki to open on LB 611. As Senator Synowiecki makes his way forward, could I have a show of hands of those here to testify in support of LB 611? I see

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none. Those in opposition? I see none. Those neutral? I see none.

SENATOR FRIEND: I will, neutral (laugh).

SENATOR BOURNE: It looks like he needs some help (laughter). Senator Synowiecki to open. Welcome.

LB 611

SENATOR SYNOWIECKI: (Exhibits 18, 19) Good afternoon, Senator Bourne, members of the committee. My name is John Synowiecki, District 7, Omaha. I bring LB 611 for your consideration, a bill to change provisions relating to appearance bonds. I have also distributed amendment to LB 611 incorporating two clarifications to the bill's language. On the current statute, if a defendant meets the requirement of an appearance bond the court clerk returns 90 percent of their appearance bond deposit to the defendant and retains 10 percent for appearance bond costs. I believe that as we transition toward a community-based system of criminal justice sanctions and emphasize the concepts embodied within restorative justice principles we must provide our courts the statutory tools necessary to make victims whole. I believe that LB 611 takes an important step toward establishing restorative justice principles within our criminal procedure statutes. LB 611 would permit the court to retain 90 percent of the appearance bond deposit for the purpose of restitution if it is ordered and for court costs, drug court costs, or any costs associated with probation, administration, or supervision. Under LB 611, if the court chooses not to retain a portion of the deposit, 90 percent of the deposit shall be returned to the defendant upon the performance of the court appearance, and the entire deposit shall be returned to the defendant in the event that no charges are filed or that charges are dropped prior to the court appearance. LB 611 establishes a rebuttable presumption that the defendant use his or her own money to satisfy the appearance bond of deposit. If the defendant can't provide sufficient evidence that he or she did not use his or her own money to satisfy the appearance bond deposit, the 90 percent of the deposit shall be returned upon performance of the appearance. Therefore, LB 611 will not financially compromise individuals that

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appropriate bond money on behalf of the defendant which may include parents, friends, and bail bondsmen. As a probation officer, I observe judges take the remainder of the appearance bond deposit in order that it be forfeited to the victim. However, these circumstances were rare and inconsistent. LB 611 provides an appropriate avenue for victims to receive at least some, if not all, of the restitution that they are rightly owed. Currently, the restitution process at criminal court rarely recovers money for a victim. I want to thank you, Senator Bourne and members of the Judiciary Committee for your consideration.

SENATOR BOURNE: Thank you. Are there questions for Senator Synowiecki? Senator Chambers.

SENATOR CHAMBERS: Senator Synowiecki, what is the purpose of an appearance bond?

SENATOR SYNOWIECKI: To assure the appearance of the defendant in court.

SENATOR CHAMBERS: Is that in the nature of a contract? If you do this then that will happen meaning that if you show up then your money is secure? This is going to change that and make the appearance bond serve as a way to collect money for other purposes than to ensure that the person shows up, isn't that true?

SENATOR SYNOWIECKI: Yeah, and Senator Chambers, this bill derives directly from my experiences in the Douglas County Court where I would be in court with a victim as part of the probation officer to conduct the presentence investigation. And let's say the victim was owed, you know, \$800, \$900, for example. And the defendant then upon the sentencing would get the bond money returned to him and essentially walk out of the courtroom with \$1,000 or \$900. Well, we had a victim right there in court that did not get any of the money owed to them as a result of the defendant's actions. I think conceptually speaking, that the court, if they can be assured and I've talked to judges and this actually came as a result of some of the judges I work on the Community Corrections Council with. If the court can be assured that the victim is made whole, that there might be a less likelihood of incarceration for that defendant under the principles of restorative justice.

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SENATOR CHAMBERS: So then you buy your way out of jail.

SENATOR SYNOWIECKI: Well, you make the victim whole as a part of the equation, if you will, in terms of as the court considers sentencing for a criminal offender.

SENATOR CHAMBERS: Well, shouldn't we call this something other than an appearance bond then because that's a sham? It's not to make sure you appear. It's to make sure that some money will be available which otherwise would not and you extort it by saying, when you come here, if you don't put up this amount of money you're going to stay here until your trial.

SENATOR SYNOWIECKI: There is nothing changed in the bill, Senator, relative to the criteria of setting the bond.

SENATOR CHAMBERS: But the amount now can be influenced by these other purposes that it would be used for.

SENATOR SYNOWIECKI: Not statutorily. I mean the...

SENATOR CHAMBERS: We're talking about a judge and you said judges go for this. Well, then they will set an appearance bond to be large enough to pay off all these other things. I think court costs, I mean costs associated with probation administration or supervision.

SENATOR SYNOWIECKI: Senator Chambers, if I may...if they do so, they would be violating the statutory provisions guiding the settings of bonds because nothing in LB 611 changes the criteria by which a bond is to be set to assure...

SENATOR CHAMBERS: But the amount is not determined statutorily.

SENATOR SYNOWIECKI: No, the amount is not determined statutorily. It's to assure the defendant that the defendant will appear in court. What the bill does do is allow the court a certain level of discretion relative to the balance of the bond, the 90 percent balance. If there's a victim, if there's probation administrative costs and so forth.

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SENATOR CHAMBERS: And now this means that if the person shows up,...

SENATOR SYNOWIECKI: Um-hum.

SENATOR CHAMBERS: ...then that bond money is not going to be returned to the person. The court will continue to hold it...

SENATOR SYNOWIECKI: The court...

SENATOR CHAMBERS: ...dependent upon how much restitution may be ordered, the court costs, and the costs associated with probation administration.

SENATOR SYNOWIECKI: The court, Senator, you're right, would have a discretion relative to the balance of the bond money to be used for these kind of activities.

SENATOR CHAMBERS: Righteousness shall flow like water and justice like a mighty stream but not in Nebraska. Thank you, Senator Synowiecki, that's all that I have.

SENATOR BOURNE: Further questions or poems (laugh) Seeing none, thank you (laughter).

SENATOR BOURNE: I'll double check. Are there any testifiers in support? Are there testifiers in opposition? Testifiers neutral? Senator Synowiecki to close.

SENATOR SYNOWIECKI: I just, for the record, Joe Kelly...I think his name is Joe Kelly. He's a Lancaster County Attorney, was here and he had to leave for a meeting. Perhaps he'll provide some written testimony to the committee, Senator Bourne, if you'd leave that open for him to provide that.

SENATOR BOURNE: Certainly, if he'd direct that to my attention I'd certainly disseminate that to the members.

SENATOR CHAMBERS: And we'll treat it like any other written testimony by somebody who didn't show up or was too busy to be here to testify (laughter).

SENATOR BOURNE: Further questions? Seeing none, that will

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conclude the hearing on LB 611. Senator Baker to open on LB 585. Welcome.

LB 585

SENATOR BAKER: Thank you, Chairman Bourne and members of the committee. I'm Tom Baker, represent District 44 and here to introduce LB 585. And this committee must get paid by the hour rather than the day or something because you're still here (laugh). This bill is dealing with the requirements of anyone who would be employed or contracted with an individual as an employee or as an independent contractor to operate a motor vehicle for the transportation of passengers in intrastate commerce. We're talking about here is taxi services, limo services, bus service of this kind. The bill says, and I'm going to be brief because quite honestly, I have other...it's late (laugh). What else can I...

SENATOR FRIEND: (inaudible) dinner (inaudible).

SENATOR BAKER: What else can I say? (laughter). You do have fun on this committee once in awhile, don't you? The disqualifications would be anyone who's convicted of homicide, murder, obviously manslaughter, motor vehicle homicide, assaults, the first-, second-, third-degree strangulation and so on. I'm not going to go through all these but the other offenses are criminal child enticement, if a felony making terroristic threats and so on. The point of the bill is we don't want people providing taxi services, limousine services and so on with these sorts of backgrounds. That's the bottom line of the bill. And these would disqualify those individuals from being employed to provide these services. And, quite frankly, I think it's an issue; we have had problems in the past. I do have people behind me who will testify as to the need. I believe they're still here, some of them at least anyway. There are some other issues that would disqualify a person from being employed in this capacity as far as prior convictions within the past five years would be not driving under the influence if they've been convicted within the past five years or twice within the past ten years and so on. And I believe it's a bill that honestly we need out there. We have very little jurisdiction over who's providing these services,



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who's driving these cabs and so on out there. And it's become more of an issue with drug problems and so on. And as far as child abuse issues and so on, I simply would not want someone taking my grandkids around in a taxicab who had this kind of a background so this would disqualify them. I'd be glad to answer any questions.

SENATOR BOURNE: Thank you. Before we take questions of Senator Baker, in order to determine how many questions we're going to ask of you, can I have a show of hands of those here to testify in support? I see one. Those in opposition? I see none. Questions for Senator Baker. Senator Chambers.

SENATOR CHAMBERS: Just one. Senator Baker, were you allowed satisfactory proof of having a good reputation? To whom would that proof be given and of what would it consist?

SENATOR BAKER: Proof would be given to the Public Service Commission, I'm assuming. That's the way I interpret it. They could correct me if I'm wrong but I think it's going to be a, you know, a judgment call, to be honest with you, as to that proof. That's the way I read it.

SENATOR CHAMBERS: So what is good reputation?

SENATOR BAKER: Having not offended again, I guess. Thou shalt not sin again type situation.

SENATOR CHAMBERS: But that...it may be something other than just that?

SENATOR BAKER: I think it could be but I would think, though, if a person would exhibit a good behavior, a good judgment, over a period of time that they would probably consider that having a good reputation concerning safety and health of others.

SENATOR CHAMBERS: Okay, that's all I'll ask you. Thank you, Senator Baker.

SENATOR BAKER: Okay, thank you.

SENATOR BOURNE: Further questions for Senator Baker? Senator Baker, I have just a couple of quick questions and

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maybe they're better directed to a subsequent testifier. But these offenses would apply whether the individual was driving in their capacity as a professional or in their personal life?

SENATOR BAKER: Yes. If they were convicted of these offenses in their personal life, yes. That's...it would apply, not while they're driving. Not necessarily while they'd be driving.

SENATOR BOURNE: Okay. So either way...

SENATOR BAKER: Either way.

SENATOR BOURNE: ...if they were in their personal vehicle or in their professional vehicle.

SENATOR BAKER: Yes, right.

SENATOR BOURNE: Okay. If an individual has been convicted of a misdemeanor involving assault in five years preceding the employment, they would not be eligible to become employed.

SENATOR BAKER: That's right.

SENATOR BOURNE: So I assume it would drop off, I assume. So if after five years and a day, they could reapply and that wouldn't stop them from...

SENATOR BAKER: Yes, and quite frankly, I consider maybe that a little bit harsh if the committee would want to look at that, that five-year time period. We just did the two-year bill on felons and voting. We'd look at something similar to that, you know.

SENATOR BOURNE: That was vetoed.

SENATOR BAKER: Well, we'll see about the override.

SENATOR BOURNE: But the question I had wasn't necessarily about the five years. It was what is a misdemeanor involving assault? What type of crime would that be?

SENATOR BAKER: That would be on a misdemeanor?

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SENATOR BOURNE: Involving assault...

SENATOR BAKER: I think that would be upon a child, kind of look at my notes here. A misdemeanor...sexual assault, misdemeanor sexual assault...

SENATOR BOURNE: I don't think it's limited to a sexual offense.

SENATOR BAKER: Where are you referring to here?

SENATOR BOURNE: Page 3, lines 3 and 4, been convicted of a misdemeanor involving assault in the five years preceding the date of employ...

SENATOR BAKER: I think that just stands, the words are what...obviously what it means. Been convicted of a misdemeanor involving assault in five years, a misdemeanor assault...

SENATOR BOURNE: But it isn't limited...

SENATOR BAKER: ...it could be of a child or individual...

SENATOR BOURNE: But it's not necessarily sexual assault. It's any assault.

SENATOR BAKER: Yes.

SENATOR BOURNE: Okay. Further questions for Senator Baker? Seeing none, thank you.

SENATOR BAKER: Thank you. I'm going to waive closing too.

SENATOR BOURNE: Well, you don't have to.

SENATOR CHAMBERS: And he's probably going to wave good-bye too. That's what he's telling you (laughter).

SENATOR FRIEND: If he's going to leave, I want him to stay and answer more questions. I'll just dream up some.

SENATOR BOURNE: (laugh) First testifier in support?

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SENATOR FRIEND: Sorry, I'm a little loopy at this point.

SENATOR BOURNE: That's okay. Welcome.

ANN BOYLE: (Exhibits 20, 21) Mr. Chairman, members of the committee, my name is Ann Boyle. I'm commissioner, I was almost chairman, commissioner of the Nebraska Public Service Commission representing the 2nd District. I'm here to testify in support of LB 585 which makes it unlawful for a regulated motor carrier to employ or contract with an individual for transportation of passengers if that individual has been convicted of specific offenses such as those involving the use of a weapon, a physical or sexual assault, certain serious driving related offenses and drugs. The bill further requires national criminal history record checks for all persons hired to operate a vehicle regulated by the commission for the transportation of passengers. The bill affects drivers of vehicles such as taxicabs and limousines. Over the past few years, the commission has examined methods of ensuring adequate safety of regulated carriers and we feel strongly that the use of criminal background checks will help advance the safety of passengers. A similar bill was previously before the Legislature during 2003 and 2004. We have made significant changes to address concerns raised then. We have limited the scope of the offenses included to those that directly relate to public safety. Some regulated carriers provide transportation for Health and Human Services. These carriers transport some of the most vulnerable members of our community including children, the elderly, and disabled. Requiring criminal background checks for drivers is not new. Both Lincoln and Omaha require criminal histories in order to obtain a local taxicab permit. Cities, however, are only able to access criminal record information through their local jurisdiction or by relying upon the driver to report where he or she has lived in order to check other jurisdictions. Furthermore, not all cities require a taxicab permit. In addition, the transportation business, the employees, is transient in nature. I know my part of the state in Omaha, many people live in Iowa but they work in Omaha. And so trying to get those background checks is difficult just because of that. The FBI maintains a comprehensive nationwide database of criminal records. However, they require specific statutory authority in order to obtain a record check. LB 585 would create that

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statutory authority and would provide consistency throughout the state by requiring criminal background checks of all persons who drive for regulated passenger carriers. The bill would provide the commission with the tools to address a danger to the public by preventing carriers from hiring an individual who has been convicted of a felony or a crime involving physical or sexual assault, has had his or her license revoked or suspended once in the past five years or twice in the past ten years, has completed a sentence within the past five years for DUI or motor vehicle homicide or has been convicted of certain drug offenses. We ask that you advance LB 585 and thank you for your opportunity to testify today. I am available to answer any questions. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Commissioner Boyle? Senator Friend.

SENATOR FRIEND: Thank you. Thank you, Senator Bourne. He almost forgot, I think. Good to see you again, Commissioner. Senator Baker might have mentioned this again. Is this...I'm assuming this could help protect the state from certain types of liability that we've run into before? I mean, or is that not...or is that off the beam?

ANN BOYLE: It hasn't come up but, as Senator Baker mentioned, our society has changed. We see much more drug activity than we have in the past. We do try our best and I think carriers do try their best. But we are hampered, I think, by the fact that even in the cities where they do background checks it is only for local jurisdictions. And it's not uncommon for us to have somebody who comes in and applies for authority to operate a business and who are not from our state. And so even with that, we are stymied in trying to check beyond just the state of Nebraska as to, you know, what their credentials are.

SENATOR BOURNE: Further questions? Commissioner, in the bill on page 3, it says the individual...I assume the job applicant shall pay the actual costs of the criminal history record check. What kind of costs are we talking about, do you think?

ANN BOYLE: It's about \$30 and actually it's something that we've discussed since the bill has been introduced and if that would become part of the burden of the carrier, that

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would be something that could be easily changed. The carrier is going to be responsible if somebody does not get a criminal background check and there is an offense that occurs as far as the liability. So it might be something that would be more worthwhile to put the burden on them. Somebody who would object to getting the background check, it would kind of raise the red flag anyway that there may be problems.

SENATOR BOURNE: Have we had problems in the state with a taxi company or another carrier hiring someone who has done some act that later on, you know, had we done a background check could have been prevented? Have we had problems?

ANN BOYLE: Not to my knowledge. I will tell you a personal example of not actually...the person would not even come under scrutiny under this. But we had a carrier who...not a carrier but a driver for a limousine company who one of our investigators were ticketed for an offense and he called my office and was very, very angry and left a rather threatening phone call, and in it, I know where you live. Later, then the investigator spoke to the city prosecutor's office. He was told that that is not a threat and that person already has a record and is somebody who you should watch out for. So it does occur. But...so it's...and I'm not here because of that. It happened several years ago.

SENATOR BOURNE: Do you...last question. Do you anticipate this bill to be applied prospectively or would it apply to those individuals already employed in the motor carrier business?

ANN BOYLE: I believe that we would look at it to apply after it has passed.

SENATOR BOURNE: So on new applicants.

ANN BOYLE: Right. We would not go back and start looking at people.

SENATOR BOURNE: Thank you. Are there further questions? Senator Chambers.

SENATOR CHAMBERS: So if Jack the Ripper is driving a cab now, he's still safe.

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ANN BOYLE: I'm sorry?

SENATOR CHAMBERS: If Jack the Ripper has a cab license, he's safe if this bill passes.

ANN BOYLE: Well, Senator, that's a good point. That is something that with that comment, that should be considered.

SENATOR CHAMBERS: And I'm not...(laugh)

ANN BOYLE: No, but...

SENATOR CHAMBERS: I don't like the bill but I was just wondering if there's a worry for safety, there have not been any examples of cab drivers doing these terrible things. It's like finding a reason to pass another law and burden ordinary people who might not be able to get a job doing anything else and maybe discourage them. Let's say that I committed some kind of crime some time ago and I've got to give two sets of fingerprints. And I tell him, I'm not trying to get a job in the U.S. Mint. I just want to drive a taxicab. And they said, well, if you don't give us two sets of fingerprints and pay for this criminal background check you can't get a job. I said, well, I don't have any money so I got to pay money before I can apply for a job. And they say, yeah. Then I don't get the job so then I'm going home dejected and then I see Senator Flood. And he looks a little tired, not attentive, and I say, now the way he's dressed he's probably got 30 or 40 bucks. I go bust him upside the head and take his money. Then I go back and get the criminal background check and I hadn't committed any crimes before that. So the thing that makes me a criminal is not on record. And having to get a criminal background check turned me into a criminal.

ANN BOYLE: Well, I think Senator Bourne asked me a question and I suggested that it would become the responsibility of the carrier because the carrier is the one who is going to be the beneficiary of having the driver available. So if that could be amended.

SENATOR CHAMBERS: Well, they're responsible now if somebody is hurt in their cab, aren't they? Or do they call them private contractors so that...?

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ANN BOYLE: Independent contractors.

SENATOR CHAMBERS: Independent contractors. Is that what they call them?

ANN BOYLE: They do have the largest carrier hires people as independent contractors although they carry the insurance. That largest carrier carries the insurance on the automobiles. And so the individual who is driving, I believe, is not responsible for what occurs in the automobile.

SENATOR CHAMBERS: That's all I would have. Thank you.

ANN BOYLE: All right.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. Appreciate your testimony.

ANN BOYLE: Thank you.

SENATOR BOURNE: Further testifiers in support? Testifiers in opposition? Testifiers neutral? Senator Baker has waived closing. That will conclude the hearing on LB 585 and the hearings for today. Thank you. (See also Exhibits 22, 23, 24)